1879

11-577

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 176.

PHILADELPHIA LAW ASSOCIATION

SARAH S. WALDEN, APPELLANT,

vs.

DARIUS S. SKINNER, AND CHARLES S. HARDEE AND JOHN N. LEWIS, EXECUTORS OF CHARLES S. HENRY, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED SEPTEMBER 3, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 176.

SARAH S. WALDEN, APPELLANT,

vs.

DARIUS S. SKINNER, AND CHARLES S. HARDEE, AND JOHN N. LEWIS, EXECUTORS OF CHARLES S. HENRY, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

INDEX.

	Original.	Print.
B.ll	1	1
Exhibit A	17	7
B	19	8
C	24	9
D	30	12
E	32	13
F	39	15
G	41	16
Subpœna in equity	43	17
Return of service	44	18
Petition of D. S. Skinner for appointment of receiver *pendente lite*	45	18
Subpœna in equity	47	19
Return of service	48	20
Interlocutory decree appointing receiver, &c	49	20
Return of service	52	21
Appearance	53	22
Injunction	53	22
Return of service	55	23
Separate answer of Darius S. Skinner	56	23
John N. Lewis	69	28
Charles S. Hardee	73	30
Special replication	77	31
Receiver's report No. 1	79	32
No. 2	80	33
No. 3	81	34
No. 4	83	34
No. 5	84	35

TESTIMONY FOR COMPLAINANT.

	Original.	Print.
Interrogatories for Mrs. Sarah S. Walden	85	36
Interrogatories for C. D. Rhind, Mrs. Frances S. Lewis, Mrs. H. M. R. Montmollin, Mrs. Caroline R. Palin, William Rogers, Miss Georgie Thompson, George Nutall, Dr. R. D. Arnold, and Mrs. J. M. Carr	85	36
Objections to interrogatories	89	37
Cross-interrogatories	90	38
Testimony of Mrs. Sarah S. Walden	95	39
C. D. C. Rhind	102	42
Mrs. Harriet M. R. Montmollin and Mrs. Caroline R. Palin	112	45
Mrs. Frances S. Lewis	120	47
William Rogers	127	50
Georgie Thompson	132	51
R. D. Arnold	140	54
George Nutall	146	56
Mrs. J. M. Carr	151	58
Interrogatories for Mrs. Sarah R. Henry	156	60
Objections to interrogatories	160	61
Cross-interrogatories	161	61
Testimony of Mrs. Sarah R. Henry	166	63
Interrogatories for Joseph Johnson	176	66
Objections to interrogatories	180	67
Cross-interrogatories	180	68
Testimony of Joseph Johnson	185	69
Interrogatories (additional) for Sarah S. Walden	195	72
Cross-interrogatories	197	73
Testimony (additional) of Sarah S. Walden	198	73
Interrogatories for Monday Habersham	212	80
Objections to interrogatories	215	81
Cross-interrogatories	215	81
Testimony of M. J. Habersham	219	82
Interrogatories for W. E. Doane and Mrs. Elizabeth A. Doane	226	85
Objections to interrogatories	228	85
Cross-interrogatories	228	85
Testimony of Wm. E. Doane	230	86
Mrs. Elizabeth A. Doane	239	89
Copies of papers introduced as evidence by complainant	246	91

TESTIMONY FOR DEFENDANT.

Interrogatories for Darius S. Skinner and Henrietta Skinner	267	98
Testimony of Darius S. Skinner	269	99
Henrietta S. Skinner	284	104
Exhibits to testimony of Darius S. Skinner	288	105
Interrogatories for Andrew M. Ross and Mrs. Martha Ross	316	114
Cross-interrogatories	318	115
Testimony of Andrew M. Ross	321	116
Mrs. Martha J. Ross	327	118
Interrogatories for Miss Margaret B. Hunter	332	119
Testimony of Miss Margaret B. Hunter	334	120
Interrogatories for William S. Basinger	337	121
Cross-interrogatories	338	121
Testimony of William S. Basinger	339	122
Interrogatories for Robert Erwin	357	127
Testimony of Robert Erwin	359	128

	Original.	Print.
Interrogatories for Ann Rose Alexander	362	129
Cross-interrogatories	363	129
Testimony of Ann Rose Alexander	364	130
Interrogatories for Edward C. Matthews and James B. Matthews	367	131
Cross-interrogatories	369	131
Testimony of Edward C. Matthews	372	132
James B. Matthews	379	134
Interrogatories for Edward F. Neufrille and James Hunter	384	135
Cross-interrogatories	385	136
Testimony of James Hunter	386	136
Edward F. Neufrille	388	136
Copies of papers introduced as evidence by defendant	391	137
Final decree	406	143
Order allowing appeal, fixing bond, and allowing supersedeas	407	144
Petition on appeal	408	144
Appeal bond	431	152
Clerk's certificate	434	153

1 UNITED STATES OF AMARICA,
Southern District of Georgia, ss:

At a stated term of the circuit court of the United States of America for the southern district of Georgia, held at the United States court-rooms in the city of Savannah, in and for the said district, on the 20th day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

Present, the honorable William B. Woods, U. S. circuit judge, and the honorable John Erskine, U. S. district judge, presiding, amongst others the following proceedings were had, to wit:

Bill for injunction and relief.

SARAH S. WALDEN, COMPLAINANT,
vs
DARIUS S. SKINNER ET AL., DEFENDANT.

Be it remembered that heretofore, to wit, on the 6th day of May, A. D. 1874, came the said complainant, by her solicitors, Messrs. B. H. Hill and Son and Henry B. Tompkins, and filed her bill against the said defendant in the fifth circuit court of the United States for the southern district of Georgia, in the words and figures following, to wit:

Bill.

In the circuit court of the United States of America.

2 To the honorable judges of the fifth circuit court of the United States for the southern district of Georgia, having jurisdiction in equity.

Humbly complaining your oratrix, Mrs. Sarah S. Walden, of the city of Savannah, and a citizen of the State of Georgia, brings this her bill for injunction and relief against Darius S. Skinner, a citizen of the State of Rhode Island, and against John N. Lewis and Charles S. Hardee, citizens of the said southern district of Georgia, and executors of the last will and testament of Charles S. Henry, dec'd, who in his lifetime was trustee for one Mrs. Penelope W. Tefft and her children.

And thereupon your oratrix complains and says, that on the twenty-eighth day of October, one thousand eight hundred and forty-seven, she intermarried with one William Pitt Tefft, (sometimes known as Wm. P. B. Tefft), and that on the ninth day of August, eighteen hundred and fifty-two, said Wm. P. Tefft departed this life, intestate, leaving no children, and your oratrix as his sole heir and legal representative; that on the fourth day of June, eighteen hundred and sixty, your oratrix intermarried with Charles Carroll Walden, who departed this life on the eighth day of December, eighteen hundred and sixty-one, testate, with no living children by your oratrix, and by will bequeathing to
3 your oratrix all property and rights owned or possessed by her at the date of their said marriage, as will appear by reference to the original will of file in the ordinary's office of the county of Chatham, in State of Georgia.

Your oratrix further shows, that the father of her first husband was Israel K. Tefft, esq., of said State of Georgia, and county of Chatham, who died intestate on the thirtieth day of June, eighteen hundred and sixty-two, and that no administration was ever had upon any estate of

his either in Georgia or elsewhere; and that the mother of her said first husband was Mrs. Penelope W. Tefft, wife of Israel K. Tefft at the date of his death, and who departed this life in the city of Savannah on the eleventh day of September, eighteen hundred and seventy-three, leaving a paper purporting to be her last will and testament, the original of which is of file in the ordinary's office in said city, and a copy of which is hereto annexed marked Exhibit A.

Your oratrix further shows, that at the date of her said first marriage in eighteen hundred and forty-seven there were then living two other children of the said Penelope W. and Israel K. Tefft, brothers of said Wm. P. Tefft, your oratrix' husband, and named respectively,
4 Henry Dennison Tefft, who died childless, intestate, and a bachelor, on the thirteenth day of August, eighteen hundred and forty-nine, and Charles E. Tefft, who also died childless, intestate, and a bachelor, on twelfth day of June, eighteen hundred and fifty-three; and that at the date of the said death of said H. D. Tefft he had a policy of insurance on his life for five thousand dollars in favor of his two brothers, Wm. P. Tefft and Charles E. Tefft, which said sum was collected in accordance with law and paid over by his administrator, as appears by reference to the records of the aforesaid court of ordinary of Chatham County.

Your oratrix further shows unto your honors, that on the twenty-eighth day of June, eighteen hundred and thirty-one, there was executed an original trust deed from one Elias Fort to said Charles S. Henry and one S. C. Greene, as trustees for said Mrs. P. W. Tefft and her three sons aforesaid, Wm. P. B. Tefft, Henry D. Tefft, and Charles E. Tefft, a copy of which trust deed is hereto annexed marked Exhibit B and prayed to be made a part of this bill, and that on the day of eighteen hundred and , the said S. C. Greene departed this life, leaving the said C. S. Henry as sole surviving trustee under said deed.

5 Your oratrix further shows, that on the nineteenth day of July, eighteen hundred and forty-eight, a certain conveyance was made by the mayor and aldermen of the city of Savannah to the said Charles S. Henry, as trustee of Mrs. P. W. Tefft, of a certain lot of land, number five (5), Montery ward, in said city, said lot being subject to certain annual ground rents in said conveyance specified, a copy of which is hereto annexed marked Exhibit C and prayed to be made a part of this bill. Your oratrix avers that said conveyance is informal and incomplete, the said C. S. Henry never having signed it, as it was intended that he should; and that it fails to set forth and express the trust interests of the three aforesaid children of P. W. & I. K. Tefft, and that it should be reformed and made to conform to the purposes of the trust as created and set forth in the original trust deed hereinbefore referred to as Exhibit B.

And your oratrix further shows that the said ground-rent, from time to time due upon said lot of land, has been regularly paid up to the date of the death of said C. S. Henry, trustee as aforesaid, and since his death that it has been paid by the persons occupying said premises; and that said Wm. P. Tefft, at the date of said conveyance from the mayor and alderman of said city, took an interest as cestui que trust of one-fourth, and that at the death of said Henry D. Tefft, in August, eight-
6 een hundred and forty-nine, said Wm. P. became entitled to the one-third interest as a cestui que trust under said conveyance from said city.

And your oratrix further shows unto your honors that during the year

eighteen hundred and forty-nine the buildings on said lot number five, Monterey ward, were begun to be erected by said C. S. Henry, trustee for said P. W. Tefft and her said children, and were built partly under the supervision and direction of said Isreal K. Tefft, as agent for said trustee, and that said buildings were completed about the month of January, eighteen hundred and fifty, at a cost of about nine thousand nine hundred and thirty-four & $\frac{69}{100}$ dollars ($9,934.69), exclusive of the said amount of two hundred and forty-one dollars ($241) paid said city for said lot. And your oratrix avers that of said sum of nine thousand nine hundred and thirty-four $\frac{69}{100}$ dollars, the sum of five thousand six hundred and thirty-four & $\frac{69}{100}$ dollars ($5,634.$\frac{69}{100}$) was furnished to said C. S. Henry, trustee as aforesaid, by the said Israel K. Tefft during the process of said building, and that said sum, by the express wish of said I. K. Tefft, went into the construction of said buildings and became a part of the trust estate, so held by said C. S. Henry, as trustee for said

7 P. W. Tefft and her children, or for said children solely; and that upon the death of said Henry D. Tefft, one-half of such interest as he had in said trust vested in said Wm. P. Tefft as one of the cestui que trusts then surviving.

Your oratrix further shows that on the thirtieth day of July, eighteen hundred and forty-nine, the said lot of land number twenty-three, Warren ward, lying in said city of Savanah, and held in trust as aforesaid by C. S. Henry, surviving trustee, and particularly referred to in Exhibit B, hereto annexed, was regularly and legally sold by said trustee, and said cestui que trust to one John Doyle for the sum of twenty-four hundred dollars ($2,400.00), as will appear by the copy of a deed hereto annexed, marked Exhibit D, and prayed to be made a part of this bill. And your oratrix avers that the whole of said amount, except six hundred dollars, the portion of said Penelope W. Tefft, was put into the said improvements on lot number five, Monterey ward, by said C. S. Henry, trustee as aforesaid, for the benefit of said three other cestui que trusts and their legal representatives; the said P. W. Tefft withdrawing six hundred dollars from said trust fund and refusing to allow it to go into said improvements, because the said trust was not annulled and the legal title to said lot and improvements made over to her absolutely, as is evidenced by an exhibit hereinafter to be annexed and marked E. And your oratrix avers that after the death of the said H.

8 D. Tefft, one of the three beneficiaries for said fund so put into said house, that her husband, Wm. P. Tefft, became entitled to the one-half of the said trust fund of eighteen hundred dollars.

Your oratrix further shows that when said Henry D. Tefft died, on thirteenth August, eighteen hundred and forty-nine, as hereinbefore set forth, the said insurance policy on his life for five thousand dollars was duly collected by his adminis rator, William P. Tefft, of Savannah, Georgia, and paid over according to law, and that one-half of said sum, being twenty-five hundred dollars, belonging to Wm. P. Tefft, was by him paid over to his father, Israel K. Tefft, to be invested in the improvements then being erected on said lot number five, Monterey ward, and that said sum of money was in fact invested in said improvements by and wi h the knowledge and consent of the said C. S. Henry, trustee as aforesaid; all of which will more fully appear by reference to a copy of a letter written by said I. K. Tefft to Wm. P. Tefft and hereto annexed, marked Exhibit E, and prayed to be made a part of this bill. And your oratrix avers, as she is informed and believes, that said sum of twenty-five hundred dollars so invested by said Wm. P. Tefft, her husband, as

aforesaid, in the improvements upon said lot, became an equitable charge upon said premises.

Your oratrix further shows unto your honors that on the nineteenth day of August, eighteen hundred and sixty-four, the said Charles
9 S. Henry, trustee as aforesaid, departed this life, leaving as his executors of his last will and testament John N. Lewis and Charles S. Hardee, both of whom duly qualified as such, and had said will proven in terms of the law, and neither one of whom has ever been discharged as executor; all of which will fully appear by reference to the said original will and the proceedings thereon now of file in the court of ordinary of said county of Chatham. And your oratrix avers that at the time of the death of the said C. S. Henry none of the said trusts hereinbefore set forth had ceased or in any manner determined, but that whatever right or interest the said P. W. Tefft had or enjoyed in said lot of land, or the improvements thereon, were simple equities held as cocestui que trust with your oratrix under the said C. S. Henry as their trustee, and that whatever interest or estate the said C. S. Henry had or enjoyed at his death in said lot and its improvements descended to and is now vested in the aforesaid executors of his said will.

Your oratrix further shows unto your honors that during the whole of the lifetimes of said trustee and of said I. K. Tefft, and after the death of her said first husband, Wm. P. Tefft, she continued from time to time to reside upon said premises, and that her said interest in said premises as sole heir-at-law of her said husband was never disputed, but expressly recognized, and that no effort was ever made by any per-
10 son, directly or indirectly, to prevent or hinder her from the free and ample enjoyment of said premises as a place of abode. And your oratrix further avers that after the deaths of said trustee and said I. K. Tefft she still continued to reside at said house with the said Penelope W. Tefft, who never disputed her right so to do, and not until after said P. W. Tefft had grown very old and infirm, and had fallen under very many evil influences, did she pretend that your oratrix had no interest in said premises. And your oratrix avers that on more than one occasion since the spring of eighteen hundred and sixty-six said P. W. Tefft has spoken of and admitted the interest of your oratrix in said premises as being at least equal to her own in value, and has refused to become responsible for the payment of more than one-half of the cost of certain repairs upon said house, because, as said P. W. Tefft alleged, your oratrix was at least equally interested with her in the said property, and liable to bear her proportion of such expenses. And your oratrix further avers that at the death of said P. W. Tefft, in September, eighteen hundred and seventy-three, your oratrix was living in the house with her as her sole companion, as part owner of said premises, and has since that date continued to reside in said house upon said lot.

Your oratrix further shows unto your honors that on the twenty-
11 eighth day of September, eighteen hundred and seventy-two, said P. W. Tefft executed two papers, one purporting to be her last will, a copy of which is heretofore referred to as Exhibit A, with Andrew M. Ross and William S. Basinger, esqrs., of said city of Savannah, named as executors, and neither of whom has ever qualified as such, and the other purporting to be a deed to said defendant, Darius S. Skinner, in which she affected to convey to him the full, legal, and equitable estate in said lot and improvements on and after her death, a copy of which said deed is hereto annexed, marked Exhibit F. And your oratrix avers, as she has been informed and believes, that said paper is wholly void as a deed of any legal estate, and valueless to convey anything to said

defendant except such mere equitable right and interest in said premises as the said P. W. Tefft may have derived through the conveyance made by the mayor and aldermen of Savannah to said C. S. Henry, trustee as aforesaid, and in conformity with the original trust-deed from Fort to Henry & Greene, trustees, heretofore referred to as Exhibit B.

Your oratrix further shows unto your honors that on several occasions during the life of the said P. W. Tefft she advanced the whole of the money to pay for taxes, insurance, &c., due upon said premises, tak-
12 ing therefor receipts from the said P. W. Tefft, she requesting to give the same, and that since the death of the said P. W. Tefft your oratrix has paid the taxes, insurance, &c., on said premises, which will more fully appear by reference to an exhibit hereto annexed, marked G.

The premises considered, your oratrix had well hoped that no disputes would have arisen concerning her interest in said estate, which she has so long occupied and in possession of which she still is; but that any and all parties claiming any right, title, or interest in said property would have submitted their claims to your oratrix in a fair and amicable manner, or would have gone into a court of equity where their truth could have been declared, and their interest, if any they had, lawfully ascertained. But so it is, may it please your honors, that the said defendant, Darius S. Skinner, pretending to have acquired the whole legal and equitable title to said estate, under said will and said deed, marked respectively Exhibits A and F, hereto annexed, and combining and confederating with divers other persons, at present unknown to your oratrix, and contriving how greatly to annoy and injure your oratrix in the premises, first brought an action to the honorable superior court of Chatham County against your oratrix as an intruder upon said premises, under a special statute of the State of Georgia, and soon
13 thereafter brought an action of ejectment, as Doe ex dem. Darius S. Skinner versus Roe, i. e., Sarah S. Walden, in this honorable circuit court of the United States, on the law side thereof, which said action is on the trial docket at this present April term of said court; which said last action said defendant is strenuously endeavoring to bring to a trial in order to eject your oratrix from said premises, and your oratrix avers that she has reason to believe and does believe, that said Darius S. Skinner is insolvent and has no property in this State; and that it would be an irreparable damage and injury to your oratrix to have said ejectment suit proceed to judgment against her before she has an opportunity of having definitely ascertained in a court of equity the true interests of said defendant and your oratrix in said premises. And your oratrix expressly avers that the said deed from said P. W. Tefft to said defendant does not and cannot convey to him any title whatsoever whereby he should be allowed to eject your oratrix, and that said paper is a cloud upon said estate and upon the equities of your oratrix.

And your oratrix further shows unto your honors that all and every of said trusts, hereinbefore set forth, were and are executory, and that neither your oratrix nor any other person has a legal estate or a "complete equity" in said lot of land and its improvements, and as
14 your oratrix is not compelled even in the State of Georgia to set up an equitable defense in a court of law; and as it is necessary for the full and adequate protection of the rights and equities of your oratrix in the premises that a court of competent equity jurisdiction should pass upon and declare the various questions and interests involved; and as all the said actings, doings, and pretences of the said defendant, D. S. Skinner, are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your oratrix:

aforesaid, in the improvements upon said lot, became an equitable charge upon said premises.

Your oratrix further shows unto your honors that on the nineteenth day of August, eighteen hundred and sixty-four, the said Charles
9 S. Henry, trustee as aforesaid, departed this life, leaving as his executors of his last will and testament John N. Lewis and Charles S. Hardee, both of whom duly qualified as such, and had said will proven in terms of the law, and neither one of whom has ever been discharged as executor; all of which will fully appear by reference to the said original will and the proceedings thereon now of file in the court of ordinary of said county of Chatham. And your oratrix avers that at the time of the death of the said C. S. Henry none of the said trusts hereinbefore set forth had ceased or in any manner determined, but that whatever right or interest the said P. W. Tefft had or enjoyed in said lot of land, or the improvements thereon, were simple equities held as cocestui que trust with your oratrix under the said C. S. Henry as their trustee, and that whatever interest or estate the said C. S. Henry had or enjoyed at his death in said lot and its improvements descended to and is now vested in the aforesaid executors of his said will.

Your oratrix further shows unto your honors that during the whole of the lifetimes of said trustee and of said I. K. Tefft, and after the death of her said first husband, Wm. P. Tefft, she continued from time to time to reside upon said premises, and that her said interest in said premises as sole heir-at-law of her said husband was never disputed, but expressly recognized, and that no effort was ever made by any per-
10 son, directly or indirectly, to prevent or hinder her from the free and ample enjoyment of said premises as a place of abode. And your oratrix further avers that after the deaths of said trustee and said I. K. Tefft she still continued to reside at said house with the said Penelope W. Tefft, who never disputed her right so to do, and not until after said P. W. Tefft had grown very old and infirm, and had fallen under very many evil influences, did she pretend that your oratrix had no interest in said premises. And your oratrix avers that on more than one occasion since the spring of eighteen hundred and sixty-six said P. W. Tefft has spoken of and admitted the interest of your oratrix in said premises as being at least equal to her own in value, and has refused to become responsible for the payment of more than one-half of the cost of certain repairs upon said house, because, as said P. W. Tefft alleged, your oratrix was at least equally interested with her in the said property, and liable to bear her proportion of such expenses. And your oratrix further avers that at the death of said P. W. Tefft, in September, eighteen hundred and seventy-three, your oratrix was living in the house with her as her sole companion, as part owner of said premises, and has since that date continued to reside in said house upon said lot.

Your oratrix further shows unto your honors that on the twenty-
11 eighth day of September, eighteen hundred and seventy-two, said P. W. Tefft executed two papers, one purporting to be her last will, a copy of which is heretofore referred to as Exhibit A, with Andrew M. Ross and William S. Basinger, esqrs., of said city of Savannah, named as executors, and neither of whom has ever qualified as such, and the other purporting to be a deed to said defendant, Darius S. Skinner, in which she affected to convey to him the full, legal, and equitable estate in said lot and improvements on and after her death, a copy of which said deed is hereto annexed, marked Exhibit F. And your oratrix avers, as she has been informed and believes, that said paper is wholly void as a deed of any legal estate, and valueless to convey anything to said

defendant except such mere equitable right and interest in said premises as the said P. W. Tefft may have derived through the conveyance made by the mayor and aldermen of Savannah to said C. S. Henry, trustee as aforesaid, and in conformity with the original trust-deed from Fort to Henry & Greene, trustees, heretofore referred to as Exhibit B.

Your oratrix further shows unto your honors that on several occasions during the life of the said P. W. Tefft she advanced the whole of the money to pay for taxes, insurance, &c., due upon said premises, taking therefor receipts from the said P. W. Tefft, she requesting to give the same, and that since the death of the said P. W. Tefft your oratrix has paid the taxes, insurance, &c., on said premises, which will more fully appear by reference to an exhibit hereto annexed, marked G.

12

The premises considered, your oratrix had well hoped that no disputes would have arisen concerning her interest in said estate, which she has so long occupied and in possession of which she still is; but that any and all parties claiming any right, title, or interest in said property would have submitted their claims to your oratrix in a fair and amicable manner, or would have gone into a court of equity where their truth could have been declared, and their interest, if any they had, lawfully ascertained. But so it is, may it please your honors, that the said defendant, Darius S. Skinner, pretending to have acquired the whole legal and equitable title to said estate, under said will and said deed, marked respectively Exhibits A and F, hereto annexed, and combining and confederating with divers other persons, at present unknown to your oratrix, and contriving how greatly to annoy and injure your oratrix in the premises, first brought an action to the honorable superior court of Chatham County against your oratrix as an intruder upon said premises, under a special statute of the State of Georgia, and soon thereafter brought an action of ejectment, as Doe ex dem. Darius S. Skinner versus Roe, i. e., Sarah S. Walden, in this honorable circuit court of the United States, on the law side thereof, which said action is on the trial docket at this present April term of said court; which said last action said defendant is strenuously endeavoring to bring to a trial in order to eject your oratrix from said premises, and your oratrix avers that she has reason to believe and does believe, that said Darius S. Skinner is insolvent and has no property in this State; and that it would be an irreparable damage and injury to your oratrix to have said ejectment suit proceed to judgment against her before she has an opportunity of having definitely ascertained in a court of equity the true interests of said defendant and your oratrix in said premises. And your oratrix expressly avers that the said deed from said P. W. Tefft to said defendant does not and cannot convey to him any title whatsoever whereby he should be allowed to eject your oratrix, and that said paper is a cloud upon said estate and upon the equities of your oratrix.

13

And your oratrix further shows unto your honors that all and every of said trusts, hereinbefore set forth, were and are executory, and that neither your oratrix nor any other person has a legal estate or a "complete equity" in said lot of land and its improvements, and as your oratrix is not compelled even in the State of Georgia to set up an equitable defense in a court of law; and as it is necessary for the full and adequate protection of the rights and equities of your oratrix in the premises that a court of competent equity jurisdiction should pass upon and declare the various questions and interests involved; and as all the said actings, doings, and pretences of the said defendant, D. S. Skinner, are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your oratrix:

14

In consideration whereof and forasmuch as your oratrix is entirely remediless in the premises according to the strict rules of the common law, and can only have full, adequate, and complete relief in a court of equity, where matters of this nature are properly cognizable and relievable: To the end therefore that complete justice may be done in the premises and that your oratrix may have her rights accurately ascertained and fully established, your oratrix prays your honors that you do grant unto your oratrix not only the writ or writs of injunction of this honorable court, to be issued out of and under the seal of this court, to be directed to the said Darius S. Skinner and his confederates, to restrain him from proceeding at law against your oratrix, and more especially from further prosecuting said ejectment suit now pending in this honorable
15 court touching any of the matters in question, but also the writ or writs of subpœna of the United States of America, to be directed to the said Darius S. Skinner, John N. Lewis, Charles S. Hardee (and the rest of the confederates of D. S. Skinner, when discovered) thereby commanding them and every of them at a certain day, and under a certain pain therein to be specified, personally to be and appear before your honorable court, and there and then to answer all and singular the premises, and to stand, perform, and abide by such order or decree therein as to your honors may seem fit. And your oratrix further prays that upon the hearing of this bill your honors will decree the said conveyance from the mayor and aldermen of Savannah, referred to in Exhibit C, hereto annexed, to be reformed and made to speak the true interests of said trust in conformity with the original trust deed from Elias Fort to the trustees of Mrs. P. W. Tefft and her children. That your honors will decree the pretended deed from said P. W. Tefft to said D. S. Skinner, bearing date twenty-eighth day of September, eighteen hundred and seventy-two, a copy of which is hereto annexed as Exhibit F, to be null and void and to be delivered up for cancellation. That your honors will decree the real interest of your oratrix in said premises and the real interest of said D. S. Skinner in said premises (if he has any interest whatever), and that the aforesaid executors,
16 defendants herein, be required to convey such interests by deed, if it can be so done, or that said executors be required to sell said lot number five, Montery Ward, with improvements, for partition according to the interest that this honorable court may determine upon between your oratrix and said D. S. Skinner; and for such other and further orders, judgments, decrees, and relief in the premises as the nature of this case may require, and as unto your honors may seem meet and proper, and your oratrix will ever pray, &c.

B. H. HILL & SON,
HENRY B. TOMPKINS,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
Southern District of Georgia, Chatham County, ss:

Before me, the undersigned, personally came Mrs. Sarah S. Walden, who, being first duly sworn, deposes and says that the matters and things set forth in the above bill are true, when spoken of her own knowledge, and that she believes them to be true when spoken upon information and belief.

SARAH S. WALDEN.

Subscribed and sworn to before me this the sixth day of May, A. D. 1874.

[SEAL.]

A. P. ADAMS,
Not'y Pub., Chat. Co., Ga.

17 EXHIBIT A.

GEORGIA:

I, Penelope W. Tefft, widow, of the city of Savannah, county of Chatham and State aforesaid, being of sound and disposing mind and memory, do make and publish this my last will and testament, hereby expressly revoking and making null and void all former last wills and testaments, heretofore by me at any time made.

1st. First. I do hereby ratify and confirm the following gifts and conveyances heretofore made by me, according to the terms thereof, whether made orally or in writing, viz: The gift of the library of Israel K. Tefft, my late husband, to The Georgia Historical Society; the gift of my household and kitchen furniture to my daughter-in-law, Mrs. Sarah F. Walden; the conveyance, of even date with this will, of my house and lot, number five (5), Monterey Ward, in the city of Savannah, to my nephew, Darius S. Skinner, of Providence, Rhode Island, in trust for myself during my life, with the remainder in fee-simple to my said nephew.

2d. Second. I direct my executors, hereinafter named, to sell all my property not thus disposed of, as soon as possible after my decease,
18 either at public or private sale, as they may consider most advantageous, without applying to any court for leave to do so, and with power to make all necessary conveyances thereof, and out of the proceeds thereof, to pay all my just debts and funeral expenses, and then to pay the residue of such proceeds in the following sums and to the following persons, viz: Two hundred dollars to my old and faithful servant, James Bently Matthews, three hundred dollars to Charles Tefft Pritchard, son of Dr. Paul Pritchard, and the residue in equal parts to my friend Margaret B. Hunter, now of New York City, and my aforesaid daughter-in-law, Mrs. Sarah F. Walden. The above bequest to Mrs. Walden I make upon the express condition that she relinquish and surrender all claims, real or imaginary, that she may have against the estate of my late husband or against myself, or may suppose herself to have, which condition I impose because I have some reason to believe that my said daughter-in-law is under an impression that she has some claim of some sort, though I am convinced she has none whatever of any sort. Should my said daughter-in-law decline to accept the said bequest upon that condition, then I direct my said executors, if she shall continue so to decline for twelve months from the date of their letters testamentary, to pay the same to my nephew, Darius S. Skinner, above named.

3d. Third. I nominate and appoint my friends, Andrew M.
19 Ross and William S. Bassinger, of Savannah, aforesaid, to be the executors of this my last will and testament, either of whom, if the other shall fail to be qualified, shall exercise all the powers hereby conferred upon both.

In testimony whereof I, the said Penelope W. Tefft, have hereunto set my hand and seal, at Savannah aforesaid, this twenty-eighth day of September, eighteen hundred and seventy-two.

PENELOPE W. TEFFT. [SEAL.]

Signed, sealed, published and declared by the said Penelope W. Tefft, as and for her last will and testament, in the presence of us, who, at her request, and in her presence, and in the presence of each other, have

subscribed our names as witnesses hereto, at Savannah aforesaid, on the twenty-eight day of September, eighteen hundred and seventy-two.

JNO. D. ROSS.
BENJ. F. GRAY.
NOBLE N. H. ROSS.

EXHIBIT B.

GEORGIA,
Chatham County:

This indenture made this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and thirty-one, between
20 Elias Fort, of the city of Savannah, merchant, of the first part, and Charles S. Henry and Stephen C. Greene, of the said city of Savannah, of the second part, trustees for Mrs. Penelope W. Tefft, wife of Israel K. Tefft, and Henry D. Tefft, William P. B. Tefft, and Charles Edward Tefft, children of the said Penelope W. and Israel K. Tefft.

Whereas Thomas B. Stabbs, of the town of Milledgeville, Mrs. Maria Susannah Delany and Francis V. Delanney, her husband, did by indenture bearing date twenty-sixth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, for and in consideration of the sum of eight hundred and fifty dollars then in hand paid, did sell and convey to the said party of the first part, his heirs, executors, administrators, and assigns, forever, all that lot of land situate, lying, and being in the city of Savannah, and known and designated in the plan of the said city as lot number twenty-three (23), Warren Ward, containing sixty feet in length and ninety feet in depth, with all the buildings and improvements then thereunto belonging, subject nevertheless to the tenure taxes and assessments imposed on said lot as in a deed to one Edward White set forth, as by reference to said deed will more fully appear:

Now, therefore, this indenture witnesseth: That the said party of the first part, for and in consideration of the sum of eight hundred
21 dollars to him in hand paid by the said party of the second part, as trustees, as aforesaid, at and before the ensealing and delivery of this indenture, the receipt whereof is hereby acknowledged, and for divers other good causes and considerations him hereunto moving, hath granted, bargained, sold, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, remise, release, convey, and confirm, unto the parties of the second part, trustees, as aforesaid, their heirs, executors, and administrators, all that lot of land situate, lying, and being in the city of Savannah, and known as lot number twenty-three (23), Warren Ward, containing sixty feet in length, and ninety feet in depth, together with all and singular the buildings and improvements to the same now belonging or in any wise appertaining, subject, nevertheless, to such taxes, assessments, or ground rent as are imposed on said lot by the mayor and aldermen of the city of Savannah, by their deed conveying the same to one Edward White, bearing date the thirtieth day of June, in the year of our Lord one thousand eight hundred and six.

To have and to hold the above granted, bargained, and conveyed premises above described, and hereby intended to be conveyed, together with all and singular the hereditaments and improvements to the same belonging or in anywise appertaining, subject to the tax, assessment, and
22 ground rent aforesaid, to the said parties of the second part, their heirs, executors, administrators, and assigns, forever, upon the following trusts and confidence; that is to say, first, upon trust to have & to

hold the said lot and improvements above described and conveyed, subject to the taxes, assessments, and ground rent imposed on the same by the mayor and aldermen of the city of Savannah aforesaid, to and for the sole and separate use, benefit, and behoof of the said Penelope W. Tefft, wife of the said Israel K. Tefft, during her lifetime, and Henry D. Tefft, William P. B. Tefft, and Charles Edward Tefft, children of the said Penelope and Israel K. Tefft, and after the death of the said Penelope, as tenants in common in equal parts.

Secondly. Upon trust that if during the lifetime of the said Penelope W. Tefft it should be deemed advisable by her to sell and convey the said premises, then upon this further trust, that the said party of the second part, trustees as aforesaid, or the survivor of them upon her application, and with the consent of the said Penelope W. Tefft, signified by her, being a party to said conveyance, will sell and convey the said lot and improvements for the best price which can be obtained for the same to any person or persons whatsoever, without any application to a court of law or equity for that purpose to authorize the same, and the proceeds thereof, upon the same trusts as aforesaid, to invest in
23 such other property or manner as the said Penelope shall direct and request for the same use, benefit, and behalf.

Thirdly. Upon trust if the said Penelope W. Tefft shall not during her lifetime direct and request the said premises and improvements to be sold and conveyed as aforesaid, and shall die without making and requesting such sale and conveyance, then, upon this further trust, to have and to hold the said lot and improvements for the sole use and benefit of the said children, or the survivor or survivors of them, share and share alike, until the youngest shall arrive at the age of twenty-one years, at which time the said parties of the second part, upon the request of the said child or children, are hereby authorized to sell and convey the said lot and improvements as aforesaid, subject to the ground rent aforesaid, for the best price which can be obtained for the same, and the proceeds thereof to pay and divide among the said children, or the survivor or survivors of them, share and share alike. And I, the said Elias Fort, for myself, my heirs, executors, and administrators, the above bargained and conveyed premises unto the said Charles S. Henry and Stephen C. Greene, trustees, as aforesaid, their heirs, executors, administrators, and assigns, shall and will forever warrant and defend against the claim or claims of all persons whatsoever.

24 In witness whereof I have hereunto set my hand and seal on the day of the date first above written.

ELIAS FORT. [L. S.]

Signed, sealed, and delivered in the presence of—
JOHN F. KACKLER.
JAS. S. PELOT, *J. P.*

EXHIBIT C.

STATE OF GEORGIA,
City of Savannah:

This indenture, made the nineteenth day of July, in the year of our Lord one thousand eight hundred and forty-eight, and in the seventy-third year of the Independence of the United States of America, between the mayor and aldermen of the city of Savannah and hamlets thereof, in the State of Georgia, of the one part, and Charles S. Henry, trustee for Mrs. Penelope W. Tefft, wife of Israel K. Tefft, of the city and State aforesaid, of the other part.

Whereas, under and by virtue of an ordinance for that purpose, made and passed by the mayor and aldermen of the city of Savannah aforesaid, on the fourth day of March, one thousand eight hundred and forty-seven, a certain portion of the south common was laid out into lots, and the said lots, after being duly valued, were exposed to
25 public sale, on the terms and conditions mentioned and contained in the said ordinance; and whereas the lot hereinafter mentioned, being valued at twelve hundred dollars, was set up at that sum, an' there was bid thereupon, as increase money, one dollar, at which sums the said Charles S. Henry (trustee), being the highest bidder, became the purchaser of the said lot; and whereas the said Charles S. Henry, trustee, having paid into the city treasury the sum of two hundred and forty-one dollars, being twenty per cent. on the original valuation of said lot and premises hereby conveyed, and the increase money thereof, hath made his election, for the present, of retaining the valuation money in his own hands and paying a ground-rent for the use and occupation of said lot, which ground-rent, at and after the rate mentioned in the said ordinance, will amount to fifty-seven $\frac{00}{100}$ dollars per year:

Now, therefore, this indenture witnesseth: That the said mayor and aldermen, for and in consideration of the said sum of two hundred and forty-one dollars being paid into the city treasury, as by a receipt for the same, endorsed hereon, and signed by the city treasurer, will appear, and also in consideration of the rent to be paid, and of the several covenants and agreements to be performed, have bargained and sold, and do by these presents bargain and sell, unto the said Charles S.
26 Henry, trustee, all that lot of land situate, lying, and being in that portion of ground lately in the south common, now called Monterey Ward, known by the number five (5), and containing sixty feet in length and one hundred feet in depth, with the rights, members, and appurtenances thereof:

To have and to hold the said lot, with all and singular the advantages thereunto belonging, unto the said Charles S. Henry (trustee), his executors, administrators and assigns, forever, on this express condition, nevertheless, that he, the said Charles S. Henry, trustee, his executors, administrators and assigns, do and shall yearly and every year, during such times as the said valuation money shall remain unpaid, by four equal and quarter-yearly payments, pay, or cause to be paid, into the city treasury of Savannah aforesaid, the sum of fifty-seven $\frac{00}{100}$ dollars as ground rent, for the use and occupation of the said lot and premises, the first quarterly payment to be made on the nineteenth day of October next ensuing; and in case of failure herein for the space of twenty days after any of the said quarterly payments shall become due, that then the said lot and premises shall revert to the corporation of the said city, who shall immediately thereafter possess the power of re-entry; and having by means of their proper officers, exercised such power,
27 and given a notice thereof in writing, posted on the premises, the said lot, with all improvements thereon, shall be considered, at the expiration of ten days thereafter, as absolutely revested in the corporation, and the estate by these presents created determined to all intents and purposes, as fully as if the same had not been bargained for or purchased, any sale or incumbrance or other act made or suffered by the said Charles S. Henry, trustee, his executors, administrators, or assigns, or others under him or them, to the contrary thereof in any wise notwithstanding; and the said Charles S. Henry, trustee, for himself, his heirs, executors and administrators, and every of them, do hereby covenant, grant, and agree to and with the said mayor and

aldermen, and their successors in office for the time being, that the said annual ground-rent shall be well and truly paid into the city treasury, by quarterly payments as aforesaid, according to the true intent and meaning of the said ordinance and of these presents, and that in case of failure therein, it shall and may be lawful for such re-entry to be made, and for all such other proceedings to be used, as in and by the said ordinance and the condition aforesaid are pointed out and directed. The said Charles S. Henry, trustee, in that case, for himself, his heirs, executors, administrators and assigns, and every of them, hereby
28 renouncing and releasing all claim whatsoever, both in law and equity, to the said lot, with the improvements then thereon being; and it is hereby declared to be the true intent and meaning of these presents, and of all parties to the same, that on payment of the said ground-rent, at the times and after the manner hereinbefore directed, the said Charles S. Henry, trustee, his heirs, executors, administrators and assigns, shall and may, from time to time and at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said lot and premises, and receive and take the rents, issues, and profits thereof, and of every part thereof, to him and to his own use, absolutely, without the let, suit, trouble, eviction or denial of the said corporation, or of any person or persons whatsoever acting and under them or by virtue of their authority, subject only to such assessments and burthens as shall be in common with other lot-holders in the said city; and, lastly, it is hereby provided and agreed, that it shall at any future time be in the power of the said Charles S. Henry, trustee, his heirs, executors, administrators or assigns, if he or they shall so incline, to pay in the said valuation-money to the city treasury, with what rent may be due up to that time, in full discharge and extinguishment of the said ground-rent, and in that case there shall be an acknowledgment of
29 such payment under the seal of the city, signed by the mayor and a majority of the aldermen for the time being, and attested by the city clerk, endorsed on these presents, which shall then and from thenceforth vest an absolute estate, in fee-simple, of and in the said lot and premises, in the said Charles S. Henry, trustee, his heirs and assigns, to his and their only proper use and behoof forever.

In witness whereof the parties aforesaid their hands have hereunto interchangeably set, and have also put these presents under seal, in manner directed by the said ordinance the day and year first above written.

[SEAL OF SAV'H.]

W. K. BURROUGHS.
Mayor.
HENRY HARPER.
H. H. SMETS.
SEABORN GOODALL.
THOS. H. HARDEN.
ROBERT A. ALLEN.
HIRAM ROBERTS.
ROE A. LEWIS.

Signed, sealed and delivered in presence of—
A. C. DAVENPORT, *C. C.* [SEAL OF SAV'H.]
JOHN C. HUNTER.
JOHN S. MONTMOLLIN.

Rec'd, Savannah, 8th Sept., 1848, from Charles S. Henry, esq., trustee, Mrs. Penelope W. Tefft, two hundred and forty-one dollars, being 20%

on valuation of lot No. 5, Monterey ward, & one dollar for increase of said lot.

20% on $1,200=$240
Increase, 1.00

$241.60

JOHN C. HUNTER.
City Treas.

Attest:

A. C. DAVENPORT, *C. C.*

30 Endorsed:

CLERK'S OFFICE SUPR. COURT.

GEORGIA, *Chat. County:*

Recorded in Book F F F, folios 405-'6-'7. Mar. 2nd, 1849.
Fee, $2.00.

JNO. E. DAVIS,
Clerk S. C., C. C.

EXHIBIT D.

SAVANNAH, GEO., *Sept. 6th*, 1849.

MY DEAR SON: This morning's mail brought me your favor of the 28th of August.

As regards this business arrangement with Capt. Brooke, I do not altogether like. If you take my advice you will never enter again into any business relations with any parties, but commence a commission business on your own account; it will need no capital.

The life insurance of your brother Henry, by law, goes to you and Charley. The lodge, of course, pay his funeral expenses, as he was an "Odd-Fellow." The money he took North with him to pay his travelling expenses through the summer will pay his indebtedness to A. Low & Co., which, I understand, was about four hundred dollars. When I commenced building on the commons I supposed the proceeds from
31 the sale of the old house and the bank stock given me by Mr. Wilkins would pay for the new one, but I find changing my plan of house from a two story and basement to a three story and basement changes my figures too. Instead of its costing me five thousand it will come near eight thousand. The paving stones I find much more expensive than I had any idea of. Your brother Henry promised to purchase for me the marble mantels for the house. The memorandum you found in his pocket-book with dimensions is the one I gave him when he left home.

See Charles Congden when you go to New York and ask him where would be the best place to purchase them. Now, what I desire of you and Charley is, that the money you have received from your brother Henry you will give me to put into our new house; it will be the best investment you both can make. As I told you all when the old house was sold that your interest went into the new house, and this will go in with the same understanding. Write me as soon as possible on the subject. If my request is not complied with I shall dispose of the property before I mortgage it to any one, which I should be compelled to do for the want of money to finish it.

You ask me why your mother has changed her mind and withdrawn

her portion of the proceeds from the sale of the old house. Simply because I was unwilling and will not give my consent to the titles being made wholly and entirely in her name, after the style of paper that was drawn when Mary and Monday were purchased. You can readily see the injustice to myself, as well as to your family and to your brother Charley. If Charley has left for Boston forward this to him, as I have not time to write again this week.

* * * * * * *

Affectionately, your father,

I. K. TEFFT.

EXHIBIT E.

STATE OF GEORGIA,
Chatham County:

This indenture, made this thirteenth day of July, in the year of our Lord one thousand eight hundred and forty-nine, between Charles S. Henry, esquire, of the State and county aforesaid, sole surviving trustee for Mrs. Penelope W. Tefft, wife of Israel K. Tefft, and Henry D. Tefft, William P. B. Tefft and Charles Edward Tefft, children of the said Penelope W. Tefft and Israel K. Tefft, under a certain deed of trust made, executed and delivered the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and thirty-nine, hereinafter referred to, and also by and between the said Penelope W. Tefft, for herself, and as evidence of her application, consent and approbation to this indenture, and also by and between the said Henry D. Tefft, William P. B. Tefft and Charles Edward Tefft as evidence of their consent and approbation of this indenture, by the said Charles S. Henry, esquire, as their attorney in fact, duly authorized for that purpose by their power of attorney, bearing date the twenty-first day of May, in the year of our Lord one thousand eight hundred and forty-nine, of the first part, and John Doyle, of the city of Savannah, county and State aforesaid, of the second part.

Whereas, in and by a certain deed of indenture made and executed on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and thirty-one, between Elias Fort, of the city of Savannah, merchant, of the first part, and Charles S. Henry and Stephen C. Green, of the same place, trustees of Mrs. Penelope W. Tefft, wife of Israel K. Tefft, and their children, Henry D. Tefft, William P. B. Tefft, and Charles Edward Tefft, all that lot of land situate, lying and being in the city of Savannah, and known and distinguished in the plan of said city as lot number twenty-three (23), Warren Ward, containing sixty feet in length and ninety feet in depth, together with all the buildings and improvements thereon, subject nevertheless to an annual ground-rent, payable to the mayor and aldermen of the city of Savannah, was therein and thereby conveyed by the said party of the first part to the said parties of second part, trustees as aforesaid, upon certain trusts, conditions, limitations, powers, and directions, as are therein more particularly mentioned and expressed, as by a reference to the said original deed of trust, or the record thereof, recorded in the clerk's office of the superior court of Chatham County, in book 22, folio 518, the eighth day of January, one thousand eight hundred and thirty-two, will more fully appear; and whereas since the execution and delivery of said deed of trust, Stephen C. Green, one of the said trustees named therein, hath departed this life, leaving the said Charles S. Henry, the said party of the first part to

this indenture, the sole surviving trustee in the premises; and whereas the said Penelope W. Tefft, wife of the said Israel K. Tefft, and cestuy que trust named in said deed of trust, under the power and authority vested in her by said deed, has applied to and requested me, the said Charles S. Henry, sole surviving trustee, as aforesaid, to sell and convey the said lot number twenty-three (23), Warren ward, and improvements, under the power and authority vested in me as trustee as aforesaid by said deed of trust, unto John Doyle, of the city of Savannah, State and county aforesaid, for the consideration of two thousand four hundred dollars, which application, request and her consent thereto
35 is evidenced by her signing and sealing this indenture, as also the approbation and consent of all the cestuy que trusts named in said original deed of trust, evidenced by their signing and sealing this indenture by their attorney, Charles S. Henry, duly authorized for that purpose under their power of attorney to him in writing, and bearing date the first day of May, in the year of our Lord one thousand eight hundred and forty-nine:

Now, therefore, this indenture witnesseth that I, the said Charles S. Henry, sole surviving trustee as aforesaid, under the power and authority vested in me by the said original deed of trust as aforesaid, and by and with the consent and approbation of the said Penelope W. Tefft, Henry D. Tefft, William P. B. Tefft, and Charles Edward Tefft, all of the cestuy que trusts named in the said original deed of trust, evidenced by their signing and sealing this indenture, and for and in consideration of the sum of two thousand four hundred dollars to me, as trustee as aforesaid, well and truly paid at and before the signing and delivery of these presents by the said John Doyle, the said party of the second part thereto, the receipt whereof I do hereby acknowledge, have granted, bargained, sold, remised, released, conveyed, and confirmed, and by indenture doth grant, bargain, sell, remise, release, convey, and con-
36 firm unto the said party of the second part, his heirs and assigns, forever, all that lot of land situate, lying, and being in the city of Savannah, and known and distinguished in the plan of said city as lot number twenty-three (23), Warren ward, containing sixty feet in length and ninety feet in depth, together with all and singular the buildings and improvements to the same belonging, or in anywise appertaining, and all the estate, right, title, interest, property, claim, and demand of me, the said party of the first part, as trustee as aforesaid, at law or in equity, or that of the said cestuy que trusts above named, subject, nevertheless, to the payment by him, the said party of the second part, to an annual ground rent of twenty dollars and thirty-five cents, payable quarterly to the mayor and aldermen of the city of Savannah, as by a reference to their deed for said lot, executed and delivered to one Edward White, esquire, and bearing date the thirtieth day of June, one thousand eight hundred and six, will more fully appear, and subject, nevertheless, to the following understanding and agreement, viz: That possession of said lot and improvements hereby conveyed is not to be given to him, the said party of the second part, until the first day of November next ensuing the date of the indenture, but it is to be
37 possessed and occupied by the said party of the first part, trustee as aforesaid, or by his cestuy que trusts above named, free and clear of all claim, charge, or demand for rent by him, the said party of the second part, his heirs, executors, administrators, or assigns, up to that time; and if then possession cannot be given to him, the said party of the second part, by the said party of the first part, from circumstances beyond his control, he, the said party of the first part, trustee

as aforesaid, doth hereby agree to pay, or cause to be paid, unto him, the said party of the second part, his executors and administrators, rent for the occupation of said lot and improvements for the number of days that he, the said party of the second part, may be deprived of the possession thereof, after the first day of November next ensuing the date of this indenture, at and after the rate of four hundred dollars per annum. And it is further agreed and understood by the parties to this indenture that the said party of the first part, trustee as aforesaid, or his cestuy que trust, Mrs. Penelope W. Tefft, notwithstanding anything herein contained, are to have the right and privilege of digging up and removing from the garden attached and belonging to said lot and premises such of the smaller plants and roots now growing or being thereon as the said Penelope W. Tefft may designate or desire at any time
38 prior to the taking possession of said lot and premises as aforesaid, by him, the said party of the second part, as above set forth:

To have and to hold the said lot number twenty-three, Warren ward, city of Savannah, together with all and singular the buildings and improvements to the same belonging, subject, nevertheless, to the ground rent, payable as aforesaid to the mayor and aldermen of the city of Savannah, and to the agreement and understanding above more particularly mentioned and expressed, unto him, the said party of the second part, his heirs and assigns, forever. And I, the said party of the first part, trustee as aforesaid, do hereby covenant to and with the said party of the second part, his heirs and executors, administrators and assigns, that I will warrant and defend the said title to the said premises hereby conveyed against the claim or claims of all person and persons whatsoever.

In witness whereof I, the said party of the first part, trustee as aforesaid, and the said cestuy que trusts above named, have hereunto set our hands and seals the day and year first above written.

CHARLES S. HENRY, *Trustee.* [L. S.]
PENELOPE W. TEFFT. [L. S.]
HENRY D. TEFFT,
By CHARLES S. HENRY, *His Att'y.* [L. S.]
WILLIAM P. B. TEFFT,
By CHARLES S. HENRY, *His Att'y.* [L. S.]
CHARLES E. TEFFT,
By CHARLES S. HENRY, *His Att'y.* [L. S.]

Signed, sealed, and delivered in presence of—
S. B. WILLIAMS.
A. PORTER, I. I. C. C. C.

39 EXHIBIT F.

GEORGIA:

This indenture, made the twenty-eighth day of September, eighteen hundred and seventy-two, between Penelope W. Tefft, of Savannah, in the State of Georgia, of the first part, and Darius S. Skinner, of Providence, in the State of Rhode Island, of the second part, witnesseth:

That the said party of the first part, being of great age and feeble health, and desirous of settling my worldly affairs in anticipation of early dissolution, having long since determined to give the property hereinafter described, either by will or deed, to her nephew, the said party of the second part, so that he shall have the absolute and sole

possession of the same at my death; therefore, in consideration of the premises and of her love and affection for said nephew, hath given, granted, and confirmed, and by these presents doth give, grant, and confirm unto the said party of the second part, all that lot of land in the city of Savannah, county of Chatham, and State of Georgia aforesaid, situate on the southwest corner of Bull and Jones streets, and known in the plan of said city as lot number five (5), Monterey ward, the same being what is commonly called a city lot, and subject to an annual
40 ground rent of fifty-seven dollars and sixty cents, payable to the mayor and aldermen of the city of Savannah, together with all and singular the rights, members, and appurtenances to the same belonging, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever of the said party of the first part, at law or in equity, of, in, or to the same and every part thereof, to have and to hold the same and every part thereof unto him, the said party of the second part, for and upon the uses, limits, intents, and purposes hereinafter set forth, and no other whatsoever; that is to say, in trust, to have and to hold the same to and for the sole, seperate, and exclusive use of of her, the said party of the first part for and during her life; and he, the said party of the second part, exercising no control over the same, and obeying in all things the directions of the said party of the first part as to the use, management, disposition, and possession of the same during her life as aforesaid, and from and immediately after the death of the said party of the first part, then to have and to hold the same unto the said party of the second part, his heirs, administrators, executors, and assigns, to his and their sole use and benefit, free from any trust, forever. It being the intention of the said party of the first
41 part, by this conveyance, to vest in the said party of the second part an estate in remainder in the said property, to take effect only upon the termination of the estate for life hereby reserved to herself, during which said particular estate the property shall not be subject to the control of the said party of the second part, or his heirs, executors, administrators, and assigns, in any manner whatsoever.

In witness whereof the said party of the first part hath hereunto set her hand and seal, at Savannah aforesaid, the day and year first above written.

PENELOPE W. TEFFT. [L. S.]

Signed, sealed, and delivered in presence of—the words "to" and "for" being first erased in the 11 & 12 lines of third page and the word "unto" interlined as a substitute therefor—

BENJ. F. GRAY.
JOHN D. ROSS,
Not'y Pub., C. C., Ga.

Stamp duty paid.

A. N. WILSON,
Collector Internal Revenue.

EXHIBIT G.

1st.

Received from Sarah S. Walden $28.80 for ground rent, $115.44 for State and county taxes, $41.25 for real estate, and $13.50 for waterworks; total, $198.99.

Sav'h, Oct. 14th, 1872.

PENELOPE W. TEFFT.

42 2d.

SAVANNAH, *Jan'y 6th*, 1873.

Due Mrs. Sarah S. Walden, one hundred and seven dollars and fifty-five cents, value received, for payment of insurance, taxes, and ground rent.

$107.55. P. W. TEFFT.

3d.

Due Mrs. Sarah S. Walden, one hundred and twenty-four dollars and eighty cents, value received, for payment of taxes and ground rent.

Sav'h, July 11th, 1873.

$124.80. P. W. TEFFT.

Am'ts paid since death of Mrs. Tefft.

1873.			
Dec.	3.	B. insurance	$40 00
Oct.	1.	State & county taxes	100 64
Nov.		Sav'h water-works	13 50
Sept.	30.	Real estate taxes	41 25
Dec.	31.	" " "	41 25
"	1.	Cormac Hopkins, repairing roof	14 25
		McFall for plumbing, &c	11 00
		Geo. Nutall, carpenter work, &c	17 00
1874.			
Jan'y	9.	Ground rent	28 80

43 And afterwards, to wit, on the same sixth day of May, A. D. 1874, subpœna in equity issued out of the fifth circuit court returnable the first Monday in June, A. D. 1874, in the words and figures following, to wit:

Subpœna in equity.

Equity subpœna to appear and answer.

UNITED STATES OF AMERICA,
Southern District of Georgia:

SARAH S. WALDEN, COMPLAINANT,
and
DARIUS S. SKINNER AND JOHN N. LEWIS AND Charles S. Hardee, ex'ors of Charles S. Henry, deceased, defendants. } In equity.

The President of the United States of America to Darius S. Skinner and John N. Lewis and Charles S. Hardee, executors of Charles S. Henry, deceased, greeting:

For certain causes offered before the judges of the circuit court of the United States for the southern district of Georgia, in equity, you and every of you are hereby commanded and strictly enjoined that, laying all other matters aside and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, in the city of Savannah, at rules to be had on the first Monday in June next,

44 to answer to those things which shall then and there be objected to you in a bill filed by said complainant for injunction and relief, and to do further and receive what the said court shall have considered in that behalf; and this you may in no wise omit under penalty of five hundred dollars; and have here this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the sixth day of May, in the year of our Lord one thousand eight hundred and seventy-four.

[L. S.] JAS. McPHERSON,
Clerk.

MEMORANDUM.—The defendants are to enter their appearance in the suit above stated, in the clerk's office, on or before the day at which this writ of subpœna is returnable, otherwise the bill may be taken pro confesso.

B. H. HILL & SON,
H. B. TOMPKINS,
Solicitors for Complainant.

And afterwards, to wit, on the same sixth day of May, A. D. 1874, before the return day of said writ, came the marshall and returned said subpœna with his return endorsed thereon as follows:

Return of service.

I hereby certify that I have this 6th day of May, 1874, served
45 the within subpœna in equity upon the within named Darius S. Skinner, by personally delivering to him a copy thereof.

WM. H. SMYTH,
U. S. Marshall.

Savannah, Ga., 6th May, 1874.
$2.30.

Returned served May 6th, 1874.

JAS. McPHERSON, *Clerk.*

And afterwards, to wit, on the eleventh day of May, A. D. 1874, came Darius S. Skinner, one of the said defendants, by his solicitors, Messrs. Jackson, Lawton, and Bassinger, and filed his petition, as follows:

Petition of Darius S. Skinner for the appointment of a receiver pendente lite.

UNITED STATES OF AMERICA,
Southern District of Georgia:

To the honorable the judges of the circuit court of the United States for the southern district of Georgia, having jurisdiction in equity:

The petition of Darius S. Skinner shews that he is one of the defendants to a bill filed in this honorable court by Sarah S. Walden, returnable to the rules to be held in June next, praying for an injunction to stay an action of ejectment now pending on the common law
46 side of this court, wherein your petitioner is plaintiff and the said Sarah S. Walden is defendant, and for other relief; that is apparent on the face of the said bill that the said Sarah S. Walden claims no greater interest in the property sued for in the said ac-

tion than so much as is represented by the proportion of three thousand three hundred dollars ($3,300) to ten thousand one hundred and seventy-five dollars and sixty-nine cents ($10,175.69); and that she claims that much only as a tenant in common. That the facts alleged by the complainant herself in the said bill show that your petitioner is certainly the owner of the remainder of the said property as a tenant in common, even if the claim of the said complainant be admitted, and that said complainant herself does not dispute the rights of your petitioner to that extent, inasmuch as she prays for a partition in order that she may have her alleged share in severalty. Yet, your petitioner further shows, as appears from the said complaint, the said complainant is not only in sole possession of the whole of said property, but resists the efforts of your petitioner to recover possession as well of that part which is not denied to be his property, as of that part which she claims for herself, and assigns no reason therefor.

Wherefore your petitioner prays that a receiver may be appointed to take possession of and hold and rent out the said property pend-
47 ing the litigation, and to pay to your petitioner so much of the rents and income thereof as shall be proportionate to the admitted interest of your petitioner therein, and to hold the residue of such rents and income to await the final judgment or decree of this court.

JACKSON, LAWTON & BASSINGER,
Sol's for Petitioner.

And afterwards, to wit, on the twenty-sixth day of May, A. D. 1874, subpœna in equity issued out of said court as follows:

Subpœna in equity.

Equity subpœna to appear and answer.

UNITED STATES OF AMERICA,
Southern District of Georgia:

SARAH S. WALDEN, COMPLAINANT,
and
DARIUS S. SKINNER ET AL., DEFENDANTS. } In equity.

The President of the United States of America, to John N. Lewis and Charles S. Hardee, greeting:

For certain causes offered before the judges of the circuit court of the United States for the southern district of Georgia, in equity, you
48 and each of you are hereby commanded and strictly enjoined that, laying all other business aside, and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, in the city of Savannah, at rules to be had on the first Monday in July next, to answer to those things which shall then and there be objected to you in a bill for injunction and relief, filed by the said complainant, and to do further and receive what the said court shall have considered in that behalf, and this you may in no wise omit under penalty of five hundred dollars; and have here this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Savannah, this 26th day of May, in the year of our Lord one thousand eight hundred & seventy-four.

[L. S.] JAS. McPHERSON, *Clerk.*

MEMORANDUM.—The defendants are to enter their appearance in the suit above stated in the clerk's office, on or before the day at which this writ of subpœna is returnable; otherwise the bill may be taken pro confesso.

H. B. TOMPKINS,
Sol'r for Compl'nt.

And afterwards, to wit, on the first day of June, 1874, before the return day of said writ, come the marshall and returned this subpœna with his return endorsed thereon as follows:

Return of Service.

I have served a copy of the within subpœna upon the within-named J. N. Lewis and C. S. Hardee, personally, at Savannah, Ga., June 1st, 1874.

The return of—

W. H. SMYTH,
U. S. Marshall,
Per A. B. SMITH,
Dep'ty.

49 And afterwards, to wit, on the thirtieth day of May, A. D. 1874, the following proceedings were had, to wit:

Interlocutory decree appointing receiver, and granting temporary injunction.

U. S. circuit court, southern district of Georgia.

Bill in chancery filed on the 6th of May, 1874, by Sarah S. Walden, of this district, against Darius S. Skinner, of Rhode Island, John N. Lewis and Charles S. Hardee, executors of the will of Charles S. Henry, &c., Lewis and Hardee being citizens this State, and residents of the district, to restrain the said defendant, Skinner, from further prosecuting an action of ejectment instituted by him in this court for the recovery of a house & lot, number five, Monterey Ward, in the city of Savannah, Georgia. The bill also prays general relief against all of the defendants. Shortly after the filing of this bill, and without any previous pleadings, the defendant, Skinner, filed a petition praying the appointment of a receiver to take possession of and hold and rent out the said property in dispute pending the suit, and to pay said Skinner so much of the rents and income thereof as shall be proportionate to the
50 admitted interest of said Skinner therein, and hold the residue of such rents & income to await the termination of the litigation.

The bill and certain affidavits and exhibits were read in court, as was also the aforesaid petition for a receiver, and after argument before Woods and Erskine, J. J., by Mr. Tompkins for complainant, and Mr. Basinger for the defendant and petitioner, Skinner, it was agreed by counsel that Mr. B. H. Hill, one of the solicitors for complainant, should have the privilege of filing a brief by the 27th May. The brief was filed, and is now before me. The argument was had on the last day on which the circuit judge could be present during the term, and Erskine, J., intimating his doubt of the power of a Federal judge to make an original appointment of a receiver in vacation, or at chambers, it was

stipulated by counsel that if the judge, after the presentation of Mr. Hill's brief, should be of the opinion that a receiver ought to be appointed in this cause, he might make the appointment in vacation, and that Edward F. Neufville should be the appointee, and without being required to give bond.

After mature consideration and further reflection I adhere to my concurrence with the circuit judge, on the hearing of the original argument, that a receiver ought to be appointed in this case. It is therefore ordered and decreed that the said Edward F. Neufville be, and he is hereby, appointed receiver of this court in said cause. It is further
51 ordered that the said Edward F. Neufville, esquire, as such receiver, do, within five days after his written acceptance of said receivership, and which acceptance shall be filed in the office of the clerk of this court, take possession of said house and lot number five, Monterey Ward, in the city of Savannah, and which is the subject-matter of dispute in this cause, and rent out the same to one or more persons as tenants, for the term of six months from the date of the writing, or from the tenth (10th) day of June of this present year, reserving the right to distrain on the non-payment of said rent, unless the said Sarah S. Walden, alleged to be in possession of said house, lot, and premises, shall within four days after the written acceptance of said receivership by said Neufville, on his giving written or verbal notice two days previously to said Sarah S. Walden or her solicitors, *shall*, in writing, contract with said receiver to pay to him, as receiver as aforesaid, a reasonable occupation rent, to be agreed on between the parties, for said house and lot, for the term of six months from the date of the writing, or from the tenth day of June, 1874, the rent to be paid at the end of each and every month during said term, and the receiver is to take good security for the payment of said rent as aforesaid. It
52 is further ordered and decreed that the receiver, out of the rents received by him, do pay the taxes, ground-rent, if any, and insurance on said property, and pay the residue of such rents into the registry of this court, to await the further order of the court; and also, that he report in writing, by the tenth of next December, to this court his actings and doings as such receiver in the premises.

And it is also ordered and decreed that a provisional writ of injunction be granted as prayed for in said bill of complaint, and that the clerk do issue the same. And it is further ordered that the clerk do furnish to said Edward F. Neufoille, esquire, a copy of this decree, under the seal of the court.

At chambers, May 30, 1874.

JOHN ERSKINE,
U. S. Judge.

And afterwards, to wit, on the fifth day of June, A. D. 1874, comes the marshal and makes his return as follows:

Return of service.

I have this day served a copy of the interlocutory decree upon Edward Neufoille, at Savannah, Ga., June 5th, 1874.

The return of

WM. H. SMYTH,
U. S. Marshall,
Per A. D. SMITH, *Dep'ty.*

53 And afterwards, to wit, on the first day of June, A. D. 1874, came the said defendants, by their solicitors, Messrs. Jackson, Lawton and Bassinger, and entered their appearance in said cause as follows:

Appearance.

In U. S. circuit court for so. dist. of Georgia. In equity.

SARAH S. WALDEN, COMPL'T,
and
DARIUS S. SKINNER ET AL., DEFENDANTS.

The defendants in the above-entitled cause, by their solicitors undersigned, enter their appearance therein.
June 1, 1874.

JACKSON, LAWTON & BASSINGER,
Defendants' Sol'rs.

And afterwards, to wit, on the fourth day of June, A. D. 1874, a writ of injunction issued out of said court, as follows:

Injunction.

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

54 SARAH S. WALDEN, COMPLAINANT,
vs.
DARIUS S. SKINNER ET AL., DEFENDANTS. } In equity.

The President of the United States of America to Darius S. Skinner, his confederates, counsellors, attorneys, solicitors, and agents, and to all other persons, greeting:

Whereas it has been represented to us in our circuit court of the United States for the southern district of Georgia, on the part of Sarah S. Walden, complainant, that she has lately exhibited her bill for injunction and relief in our said circuit court for said district against you, the said Darius S. Skinner, your confederates, &c., and all others, to be relieved touching the matters therein complained of; in which bill it is stated, among other things, that you are combining and confederating with others to injure the said complainant, touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience.

We therefore in consideration thereof and of the particular matters in said bill set forth, do strictly command and until the further order of the court strictly enjoin you, the said Darius S. Skinner, your confederates, &c., and all other persons whomsoever, and each and
55 every of you, under the pains and penalties which may fall upon you and each of you in case of disobedience, that you do absolutely desist and refrain from proceeding at law against the said Sarah S. Walden, and more especially from further prosecuting a certain suit in ejectment mentioned in said bill now pending in the circuit court of the United States for the southern district of Georgia touching any of the matters in question.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Savannah, in said district, this the fourth day of June, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] JAS. McPHERSON,
Clerk.

And afterwards, to wit, on the fifth day of June, A. D. 1874, comes the marshall and makes his return as follows:

Return of service.

I have this day served a copy of the within injunction in the case of Sarah S. Walden versus Darius S. Skinner personally upon William S. Basinger of the firm of Jackson, Lawton and Basinger, att'ys at
56 law, sol's for defendants, at Savannah, Ga., June 5th, 1874.
The return of

W. H. SMYTH,
U. S. Marshall,
$2.30. Per A. B. SMITH,
Deputy.

And afterwards, to wit, on the sixth day of July, A. D. 1874, came D. S. Skinner, one of the defendants, by his solicitors, and filed his answer to said complainant's bill as follows:

Separate answer of Darius S. Skinner.

In U. S. circuit court for southern district of Ga. In equity.

SARAH S. WALDEN, COMPLAINANT,
and
DARIUS S. SKINNER ET AL., DEFENDANTS.

The separate answer of Darius S. Skinner, one of the defendants, to the bill of complaint of Sarah S. Walden, the complainant.

This defendant, reserving to himself all right of exception to the said bill of complaint, for answer thereto says that he admits the fact of the marriage of the complainant to William P. Tefft, on the 28th day of October, A. D. 1847; that the said Tefft died childless and intestate on the 9th day of August, A. D. 1852; that the complainant was married
on the 4th day of June, A. D. 1860, to her second husband, Wal-
57 den, who died, without children of the said marriage on the 8th day of December, A. D. 1861; but this defendant has no knowledge or information whether or not the said Walden left a will; and respectfully submits that no such will could give any additional sanction to such rights as are set up by the complainant in her said bill, if any such there ever were.

And this defendant, further answering, admits that at the time of the said complainant's marriage to William P. Tefft, his father, Israel K. Tefft, and mother, Penelope W. Tefft, and two brothers, Henry D. and Charles E. Tefft, were all living—the whole family, consisting of those five only; and that there was in existence at the time of the said marriage a trust estate in lot number (23) twenty-three, Warren ward in the city of Savannah, which was held by Charles S. Henry, as surviv-

ing trustee under a deed from Elias Fort to the said Henry and one Greene, bearing date the 28th day of June, A. D. 1831, a copy of which is attached to the said bill of complaint as Exhibit B, in trust for the sole and separate use of the said Penelope W. Tefft during her life, with remainder at her death to such of her three sons above named as should be living at the time of her death as tenants in common.

And this defendant, further answering, admits the fact of the conveyance of the said lot number (5) five, Monterey ward, in the city
58 of Savannah, from the mayor and aldermen of the city of Savannah, and the hamlets thereof, to the said Charles S. Henry, as trustee for the said Penelope W. Tefft, bearing date the 19th day of July, A. D. 1848, a copy of which is attached to the said bill of complaint as Exhibit C; and this defendant submits that by the terms of the said conveyance, the legal title to the said lot of land was vested in the said Henry in trust for the sole and separate use of the said Penelope W. Tefft, the trust being executory only so long and for such time as the said cestui que trust should remain a feme covert; and this defendant denies that the said conveyance was informal or incomplete in any particular or that it was ever expected or intended by any one that the said Henry should sign the same, and submits that it is apparent from the allegations set forth in the said bill of complaint and from the said exhibit itself that the said conveyance was accepted by the said trustee for the purposes set forth therein.

And this defendant wholly denies that the consideration-money paid to the said the mayor and aldermen of the city of Savannah and the hamlets thereof for the lot of land mentioned in the said conveyance was a part of the trust estate above mentioned as in the hands of the said Henry under the above-mentioned deed from Elias Fort to the said Henry and Greene, or that it was derived therefrom in whole
59 or in part in any manner direct or indirect; and avers that the trust estate created by the said conveyance from the said the mayor and aldermen was wholly distinct from and unconnected with that created by the aforesaid conveyance from Elias Fort, and intended so to be; and the defendant wholly denies that it was ever intended by the mayor and aldermen aforesaid, or the said Penelope W. Tefft, or the said Charles S. Henry, that the terms of the said conveyance should be other than those expressed therein, or that the said William P. Tefft, or any other son of the said Penelope W., should have any interest whatever in the trust estate thereby created; and this defendant avers, both as matter of fact and matter of law, that neither the said William P., nor any other person than the said Penelope W. acquired any beneficial interest whatsoever in the said lot number (5), Monterey ward, under or by virtue of the said conveyance, or was intended to acquire any.

And this defendant, further answering, says that he believes the erection of the improvements on the lot number (5) five, Monterey ward, were commenced in the year 1849; and he admits that the lot in Warren ward, held in trust as aforesaid under the aforesaid conveyance from Elias Fort to Henry and Greene, was sold on the 30th day of July, A. D. 1849, for the sum of two thousand four hundred dollars, as
60 stated in the said bill of complaint; but he has no information as to what disposition was made of the proceeds of the said sale, and he avers that if the same were in fact used in the erection of the said improvements, it was done with notice of the state of the title to the said lot, and that the said Penelope W. Tefft was the sole party beneficially interested therein, the aforesaid conveyance thereof from the

said the mayor and aldermen having been duly recorded long before the said sale of the lot in Warren ward; and this defendant denies that the said Penelope W. Tefft ever consented that her interest in the said lot in Monterey ward should be made subject to any other trusts whatsever than were set forth in the aforesaid conveyance thereof from the mayor and aldermen of Savannah, and submits that she had not, in law, any power so to do, and that no such application of the proceeds of the sale of the lot in Warren ward without her consent could affect her said interest in the lot in Monterey ward with any new trusts; and this defendant further submits, whatever was done with the proceeds of the said sale, that the said William P. Tefft had no other interest in the said proceeds or in the property from which they were derived than such as was contingent only, and wholly dependent on his surviving his mother, the said Penelope W., and not capable of passing to the complainant or any other person under the statutes of
61 distribution or by any other means.

And this defendant, further answering, admits that the said Henry D. Tefft died childless, unmarried and intestate on the 13th day of August, A. D. 1849, and that the said William P. Tefft administrated on his estate; and the defendant says that the said Henry D. had his life insured, not by one policy of five thousand dollars, but by two policies, one for two thousand dollars and the other for three thousand dollars, neither of which policies was in favor of or payable to the said William P. Tefft and Charles E. Tefft or either of them, but both of them in their legal effect payable to the legal representative of the said Henry D. and cons'ituting part of the assets of his estate, and subject as such assets to distribution as by law provided; and the defendant avers that the proceeds of the said policies of insurance were received by the said William P. Tefft, as administrator as aforesaid, as assets, and administered upon by him accordingly; that upon the settlement of the said estate there remained in the hands of the said administrator, after payment of debts, to be distributed to the persons entitled thereto, the sum of four thousand two hundred and forty-seven dollars and twenty-seven cents ($4,247.27), and that the persons entitled to receive the same as distributees or heirs-at-law were the father and two brothers of the said Henry D. Tefft, that is to say, the said Israel K. Tefft, William P.
62 Tefft, and Charles E. Tefft, each being entitled to one-third thereof; that is to say, to the sum of fourteen hundred and fifteen dollars and seventy-five cents ($1,415.75); but that the said Israel K. Tefft, either through ignorance of his rights or voluntarily renouncing them in favor of his sons, this defendant is not informed which, did not receive his share of the said assets, but allowed the same to be divided between them, so that the said William P. Tefft and Charles E. received thereof each the sum of two thousand one hundred and twenty-three dollars and sixty cents ($2,123.63); and this defendant avers that to the best of his information and belief neither the said William P. nor the said Charles E. received any other or greater sum than that, either in property or money, from the said policies of insurance or from the estate of their said deceased brother Henry.

And this defendant, further answering, admits it to be true that the said Israel K. Tefft asked his said sons, William P. and Charles E., for the money to come to them from the estate of the deceased brother Henry, for the purpose of completing the improvements which had been commenced on the said lot number (5) five, Monterey ward; tho' this defendant does not know whether such request was intended to be made in the letter of the said I. K. Tefft, of which Exhibit "E" attached to

the said bill of complaint purports to be a copy; but this defend-
63 ant avers, whether the said Charles E. acceded to such request or not, the said William P. refused so to do; and this defendant avers that no part of the money received by the said William P. from the estate of his deceased brother Henry as aforesaid was applied to the erection or completion of the said improvements; and this defendant denies that the said William P. ever, at any time, contributed anything whatever to the purchase of the said lot or the erection or completion of the said improvements.

And this defendant, further answering, says that he believes the said complainant did, from time to time, after the death of her said first husband, and again after the death of her said second husband, spend periods of greater or less duration with the parents of her said first husband at the house erected on the said lot number (5) five, Monterey ward, where they continued to reside as long as they lived; but that she was not there in the exercise or assertion of any right to the premises or any part thereof, but only as the guest and upon the invitation of the said Israel K. Tefft and his wife; and this defendant denies that either of them ever at any time recognized any right in her to reside there independently of their will, or any claim of hers to any part of the said property, and submits that at least during the lifetime of her husband, the said Penelope W. Tefft was incompetent to make
64 any such admission to affect her estate in the premises, and the defendant says that apart from the fact that the said complainant was their son's widow, there was good special reason why the said I. K. Tefft and his wife should often have her at their house, from the fact that the said William P. Tefft died wholly insolvent, and that the said complainant, until her second marriage, was in a great measure dependent on them.

And this defendant, admitting the death of each member of the family of the said I. K. Tefft as stated in the said bill of complaint, submits that upon the death of the said I. K. Tefft, the trust created by the aforesaid deed from the mayor and aldermen to Charles S. Henry became executed in the said Penelope W. Tefft, who then became thereby the sole owner at law and in equity of an estate in fee-simple in the said lot number (5) five, Monterey ward, with the improvements thereon, and that the said trust did not devolve upon the executors of the said trustee; and this defendant avers that ever since that time the said Penelope W. Tefft has constantly claimed, used and treated the said property as absolutely and entirely her own, sometimes occupying it herself, and sometimes renting it out and receiving and applying to her own use the entire proceeds thereof, never recognizing or admitting any claim thereto on the part of the said complainant, or any other person whomso-
65 ever, and always asserting her own sole and exclusive right to dispose of the same at her own pleasure in any manner she might think fit, and all this with the full knowledge of the said complainant.

And this defendant, further answering, says that he is the only surviving child of the only sister of the said Penelope W. Tefft, who would be her only heir at law if she had died intestate; and that she had for many years before her death, certainly since she was left a widow without children of her own to inherit from her, openly and uniformly expressed a fixed intention to leave her property to this defendant principally, and this likewise with the full knowledge of the complainant; and that at least as early as the year 1866, the said Penelope W. made a will of that tenor, which was not revoked until she made the will of 1872, referred to in the said bill of complaint, and a copy of which is

thereto attached, marked A, and the defendant says that the deed therein referred to, of which a copy is attached, marked F, from the said Penelope W. Tefft to this defendant, was made by her for the express and avowed purpose of carrying her aforesaid intention into effect during her life; and this defendant submits that the said deed was and is legal, valid and complete, and did convey to this defendant a vested estate in remainder in fee in the said lot number (5) five, Monterey
66 ward, and the appurtenances, to take effect in possession upon the death of the said Penelope W. Tefft.

And this defendant, further answering, says that he has neither information nor belief on the subject of advances alleged by the said complainant to have been made by her to Mrs. Tefft, to pay the expenses of the said property, but if any such were ever made, it was only in the form of temporary loans to meet occasions, as indeed is apparent from the exhibit to the said bill of complaint purporting to set out copies of due-bills given to the complainant; and this defendant submits that if there be in fact any such due-bills remaining unpaid, they are evidences of debts due to the complainant by the estate of Mrs. Tefft, which, if there was any, was taken possession of by the said complainant upon her death, and are not charges upon said property; and as to any payment of taxes, insurance, &c., upon the said property, made by the complainant since the death of Mrs. Tefft, this defendant has no information, but is ready and willing, and hereby offers, if any such were in fact made, to allow the true amount thereof to the said complainant.

And this defendant, further answering, admits that when the complainant took and kept possession of the said property upon the
67 death of Mrs. Tefft, this defendant, having no information that the complainant set up any claim of title thereto, believing himself entitled thereto by virtue of the aforesaid deed from Mrs. Tefft to him, and being unable to obtain possession, did commence proceedings against her as an "intruder" under certain special provisions of the law of Georgia, in the superior court of Chatham County, in said State, which proceedings, however, have been discontinued, and are no longer pending in said court. And this defendant admits that he has commenced an action of ejectment and for *mesna* profits against the complainant on the common law side of this court for the said property, which is still here pending; and the defendant avers that the said lot and improvements have been reasonably worth, since the death of Mrs. Tefft, the sum of twelve hundred dollars per annum, and respectfully submits that he is entitled to a recovery, not only of the said property, but also of *mesna* profits at the rate aforesaid since the 11th day of September, 1873, the date of Mrs. Tefft's death.

And this defendant denies all manner of unlawful combination and confederacy wherewith he is charged, without this, that there is any other matter or thing in the said bill of complaint contained material for him to make answer unto not herein sufficiently answered, is true to the knowledge or belief of this defendant; all which matters
68 and things this defendant is ready and willing to aver, maintain, and prove, as this court shall direct, and prays to be hence dismissed with costs.

DARIUS S. SKINNER,
JACKSON, LAWTON & BASSINGER,
Def'ts' Sol'rs.

UNITED STATES OF AMERICA,
District of Rhode Island:

Before me, a commissioner of the United States, residing in the district of Rhode Island, Darius S. Skinner, who, being duly sworn, deposes and says that what is contained in the foregoing answer, as far as concerns his own act and deed, is true of his own knowledge, and that what relates to the act or deed of any other person or persons he believes to be true.

Sworn to and subscribed before me this 30th day of June, A. D. 1874, at Providence, in said State and district.

[SEAL.] FRANCIS A. DANIELS,
United States Commissioner.

And afterwards, to wit, on the twenty-ninth day of July, A. D.
69 1874, came John N. Lewis, one of the defendants, by his solicitor, A. P. Adams, and filed his separate answer to complainant's bill, as follows:

Separate answer of John N. Lewis.

In equity in fifth circuit court of U. S. for so. district of Georgia.

SARAH S. WALDEN, COMPL'T,
and
DARIUS S. SKINNER ET AL., DEFENDANTS.

The answer separate of John N. Lewis, one of the defendants, to the above-stated bill of complaint of the said Sarah S. Walden.

This defendant, now and at all times hereafter saving and reserving to himself all benefit, &c., which can or may be had or taken to the many errors, &c., in the said complainant's bill of complaint contained, for plea and answer thereto, &c.

This defendant, answering, says: That defendant, being a citizen of and residing in the State of Georgia, and in said southern district thereof, that this honorable court has no jurisdiction over him, and cannot lawfully make or execute any order, judgment, or decree in the premises concerning this defendant, but that in regard to all such matters and things as are set up in the said complainant's bill of complaint, the superior court of Chatham County, Georgia, having equity powers,
is the only tribunal which can or ought to exercise jurisdiction
70 over him in the premises. Therefore this defendant does aver and plead the said want of jurisdiction in this honorable court to the said complainant's bill, and prays judgment of this honorable court, &c.

This defendant, answering, says that he admits, as the said complainant hath alleged in her said bill, that he is one of the legally qualified executors of the last will and testament of Charles S. Henry, dec'd, and admits that said Henry was in his lifetime trustee for Mrs. Penelope W. Tefft and her children.

This defendant admits that complainant's first husband was William Pitt Tefft, who died in August, 1852, leaving no children by complainant, and he also admits that complainant did afterwards marry one Charles C. Walden, who died in the year 1862, leaving no children by complainants, but this defendant does not know whether said *said* C. C. Walden died testate or intestate.

This defendant admits that the father of said William P. Tefft was one Israel K. Tefft, and his mother was said P. W. Tefft, wife of said I. K. Tefft, who died intestate in the year 1862, and that said P. W. Tefft died in the year 1873, and this defendant, upon information and belief, admits that said I. K. Tefft died intestate, and that said P. W. Tefft did leave a will.

This defendant admits that in the year 1847 there were living three sons of the said I. K. and P. W. Tefft, and that one of them,
71 Henry D. Tefft, died about the year 1849, and that another, Charles E. Tefft, died about the year 1853; and that at the time of the death of said H. D. Tefft he had his life insured for about $5,000.00, in favor of his two aforesaid brothers, and that he has been informed and believes that said policy was collected and paid to the administrator of said H. D. Tefft, who was William P. Tefft.

This defendant admits that there was executed a trust deed from Elias Fort to C. S. Henry and S. C. Greene, as trustees for Mrs. P. W. Tefft, during her life, and her said three sons, and that the said Greene did die, leaving said Henry sole surviving trustee under said deed.

This defendant admits that the buildings on lot No. 5, Monterey ward, were begun to be erected and were completed in the manner alleged by complainant's bill, and at about the cost set forth in said bill of complaint.

This defendant admits that in the year 1849, when the said house on said lot number 5 was being built, the lot of land No. 23 Warren ward was sold by said Henry, trustee, &c., to John Doyle, for the sum of twenty-four hundred dollars, but does not know what amount of said money went into said house on said lot number five, but he understood from conversation had at the time that the money was to go into the house erected on lot No. 5, Monterey ward.

72 This defendant admits that said Charles S. Henry, trustee, &c., died on 19th August, 1864, leaving him and Charles S. Hardee as executors of his will, and that he and said Hardee duly qualified as such, and are not now discharged as such executors.

This defendant admits that said complainant has for a very long time resided on said lot No. 5, and that she is still residing there, and admits that the said P. W. Tefft did execute a deed and a will, as set forth in complainant's bill, but knows nothing of their legal force and effect.

This defendant says that he knows nothing of any advances of money or other monied transactions had between the said complainant and said P. W. Tefft, in her lifetime.

And this defendant, having fully answered all such matters and things in the said complainant's bill of complaint contained, material or necessary for him to make answer unto, &c., humbly prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully sustained.

A. P. ADAMS,
Def't's Solicitor.

UNITED STATES OF AMERICA,
Southern District of Georgia:

Before me, a notary public in and for the county of Chatham, personally came John N. Lewis, who, being duly sworn, deposes and
73 says that what is contained in the above foregoing answer, as far as concerns his own act and deed, is true, of his own knowledge, and that what relates to the acts or deeds of any other person or persons he believes to be true.

JNO. N. LEWIS.

Sworn to and subscribed before me this 27th day of July, A. D. 1874.

JOS. A. CRONK,
Not. Pub. C. Co., Ga.

And afterwards, to wit, on the twenty-ninth day of July, A. D. 1874, came Charles S. Hardee, one of the defendants, by his solicitor, A. P. Adams, and filed his separate answer to complainant's bill as follows:

Separate answer of Charles S. Hardee.

In equity in fifth circuit court of U. S. for southern dist. of Ga.

SARAH S. WALDEN, COMPLAINANT,
and
DARIUS S. SKINNER ET AL., DEFENDANTS.

The separate answer of Charles S. Hardee, one of the defendants, to the above bill of complaint of the said Sarah S. Walden.

This defendant, now and at all times hereafter saving and reserving to himself all benefit, &c., which can or may be had or taken to
74 the many errors, &c., in the said complainant's bill of complaint contained, for plea and answer thereto, &c.

This defendant answering, says that defendant being a citizen of and residing in the State of Georgia and in said southern district thereof, that this honorable court has no jurisdiction over him and cannot lawfully make or execute any order, judgment, or decree in the premises concerning this defendant; but in regard to all such matters and things as are set up in the said complainant's bill of complaint, the superior court of Chatham County, Georgia, having equity powers, is the only tribunal which can or ought to exercise jurisdiction over him in the premises. Therefore, this defendant does aver and plead the said want of jurisdiction in this honorable court to the said complainant's bill and prays judgment of this honorable court, &c.

This defendant answering, says that he admits as the said complainant hath alleged in her said bill that he is one of the legally qualified executors of the last will and testament of Charles S. Henry, dec'd, and admits that said Henry was in his lifetime trustee for Mrs. Penelope W. Tefft and her children.

This defendant admits that complainant's first husband was William Pitt Tefft, who died in August, 1852, leaving no children by complainant, and he also admits that complainant did afterwards marry one
75 Charles S. Walden, who died in the year 1862, leaving no children by complainant, but this defendant does not know whether said C. C. Walden died testate or intestate.

This defendant admits that the father of said William P. Tefft was Israel K. Tefft, and his mother was P W. Tefft, who died intestate in the year 1862, and that said P. W. Tefft died in the year 1873 (eighteen hundred and seventy-three), and this defendant upon information and belief admits that said I. K. Tefft died intestate and that said P. W. Tefft did leave a will.

This defendant admits that in the year 1847 there were living three sons of the said I. K. and P. W. Tefft, and that one of them, Henry D. Tefft, died about the year 1849, and another, Charles E. Tefft, died about the year 1853, and that at the time of the death of said H. D. Tefft, he had his life insured for about $5,000.00 in favor of his two aforesaid

brothers; and that he has been informed and believes that said policy was collected and paid to the administrator of said H. D. Tefft who was William P. Tefft.

This defendant admits that there was executed a trust deed from Elias Fort to C. S. Henry and S. C. Greene as trustees for Mrs. P. W. Tefft during her life, and her said three sons, and that the said Greene did die leaving said Henry sole surving trustee under said deed.

This defendant admits that the buildings on lot No. 5, Monterey
76 ward, were begun to be erected and were completed in the manner alleged by complainant's bill, and at about the cost set forth in said bill of complaint.

This defendant admits that in the year 1849, when the said house on said lot No. 5 was being built, the lot of land, No. 23 Warren ward, was sold by said Henry, trustee, &c., to John Doyle for the sum of twenty-four hundred dollars, but does not know what amount of said money went into said house on said lot No. 5.

This defendant admits that said Charles S. Henry, trustee, &c., died on 19th August, 1864, leaving him and John N. Lewis executors of his will, and that he and said Lewis duly qualified as such and are not now discharged as such executors.

This defendant admits that said complainant has for a very long time resided on said lot No. 5, and that she is still residing there, and admits that the said P. W. Tefft did execute a deed and a will as set forth in complainant's bill, but knows nothing of their legal force and effect.

This defendant says that he knows nothing of any advances of money or other monied transactions had between the said complainant and said P. W. Tefft in her lifetime.

And this defendant having fully answered all such matters and things in the said complainant's bill of complaint contained, material or necessary for him to make answer unto, &c., humbly prays to be hence
77 dismissed with his reasonable costs, &c., in this behalf most wrongfully sustained.

A. P. ADAMS,
Defendant's Solicitor.

UNITED STATES OF AMERICA,
Southern District of Georgia:

Before me, a notary public in and for the county of Chatham, personally came Charles S. Hardee, who, being duly sworn, deposes and says that what is contained in the foregoing answer, as far as concerns his own act and deed, is true of his own knowledge, and that what relates to the acts and deeds of any other person or persons he believes to be true.

C. S. HARDEE.

Sworn to and subscribed before me this 29th day of July, 1874.
JOS. A. CRONK,
Not. Pub. C. Co., Ga.

And afterwards, to wit, on the thirtieth day of July, 1874, came Mrs. Sarah S. Walden, complainant, by her solicitors, Messrs. B. H. Hill & Son and Henry B. Tompkins, and filed her special replication in this cause, as follows:

Special replication of complainant.

78 In equity, in the fifth circuit court of the United States for the southern district of Ga.

SARAH S. WALDEN, COMPL'T,
and
DARIUS S. SKINNER ET AL., DEFENDANTS.

The replication of Sarah S. Walden, complainant, to the several answers of Darius S. Skinner, John N. Lewis, and Charles S. Hardee, defendants, &c.

This repliant, saving and reserving to herself all and all manner of advantage of exception to the manifold insufficiency of the said answers, for and by way of replication saith that her original bill of complaint exhibited into this court against the said defendants, and all and every the matters, &c., therein contained, are true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are untrue, uncertain, and insufficient in the law to be replied to by this repliant; save and except that this repliant doth admit it to be true, as in the said answers of the said defendants, John N. Lewis and Charles S. Hardee, that said two defendants are citizens of and residing in the said southern district of Georgia, and submits to this honorable court the question of jurisdiction by said two defendants in their said answer raised. Without this that there is any other matter or thing in the said defendants' said answers
79 contained material for the repliant to reply unto and not herein well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things (save and except as aforesaid) this repliant is ready to aver and prove as this court shall award, and prays as in and by his said original bill he hath prayed.

B. H. HILL & SON,
HENRY B. TOMPKINS,
Solicitors for Complainant.

And afterwards, to wit, on the fifth day of Dec'r, 1874, came Edward F. Neufville, receiver in said cause, and filed his report in the words and figured following, to wit:

Receiver's report, No. 1.

The cause of Walden vs. Skinner, in account with Edward F. Neufville, receiver, &c.

DR.

1874.		
Aug. 18.	To paid 2 y'rs' ground rent	28 80
" " " "	1st city taxes, 1874	49 50
Sep. 23.	" " 2d " " "	49 50
Nov. 25.	" " State and county taxes	93 60
Balance on hand		28 60
		$250 00

80 CR.

1874.

July	16.	By 1 month rent to	July	16,	fr.	Mrs.	Walden.....	50 00
Aug.	17.	" " "	Aug.	"	"	"	.....	50 00
Sep.	"	" " "	Sep.	"	"	"	.....	50 00
Oct.	21.	" " "	Oct.	16,	"	"	.....	50 00
Nov.	17.	" " "	Nov.	"	"	"	.....	50 00
								$250 00

DR.

To commissions, $50.00 (for drawing lease and attending to duties as receiver).

Balance due receiver, $21.40.

E. & O. E.

Savannah, Dec. 4th, 1874.

EDWARD F. NEUFVILLE,
Receiver.

And afterwards, to wit, on the first day of May, 1875, came Edward F. Neufville, receiver in said cause, and filed his report in the words and figures following, to wit:

Receiver's report, No. 2.

The cause of Sarah S. Walden vs. D. S. Skinner, in account with Edward F. Neufville, receiver, &c.

DR.

1874.

Dec.	16th.	To p'd bal. com's as rec. allowed on 1st statement	$21 40

81 1875.

	March 12.	To paid 3 & 4 q'rs real estate tax, 1874	$99 00
	" "	two " ground rent.....	28 80
May	1.	To lease & com's as rec. for 6 mo's, to May 1st	50 00
"	" "	balance on hand	75 80
			$275 00

CR.

1874.

Dec.	16.	By 1 mo. rent to Dec. 16, from Mrs. S. S. Walden.	50 00

1875.

Jan'y	18.	" rent from Dec. 16 to Jan'y 1, " " ..	25 00
Febr'y	12.	" 1 mo. rent to Febr'y 1, from " " ..	50 00
March	5.	" 1 " " M'ch 1, " " " ..	50 00
April	7.	" 1 " " April 1, " " " ..	50 00
"	29.	" 1 " " May 1, " " " ..	50 00
			$275 00

E. & O. E.

Savannah, May 1st, 1875.

EDWARD F. NEUFVILLE,
Receiver.

And afterwards, to wit, on the tenth day of November, A. D. 1875, came Edward F. Neufville, receiver in said cause, and filed his report in the words and figures following, to wit:

Receiver's report, No. 3.

Walden vs. Skinner, in account with Edward F. Neufville, receiver.

DR.

1875.

	May 12th.	To Daniels & Vincent, commissioners.	$35 00
82	May 12th.	To Ward & Jones & Whitehead.....	20 00
	June 23d.	" first q'rs R. E. tax, ending M'ch 3, '75...	49 50
July 21.	To G. A. Howell, taking testimony.....		70 00
Aug. 27.	" second q'rs R. E. tax, ending June 30, '75.....		49 50
Sept. 20.	" R. H. Footman & Co., ins. prem.....		43 50
Nov. 10.	" commissions as receiver @ 10 %.....		30 00
" "	" balance on hand.....		78 30
			$375 80

CR.

May 1.	By balance on hand.....		75 80
June 8.	" 1 mo. rent to June 1, from Mrs. Walden.....		50 00
July 10.	" 1 " " July 1, " " "		50 00
Aug. 10.	" 1 " " Aug. 1, " " "		50 00
Sept. 8.	" 1 " " Sep. 1, " " "		50 00
Oct. 8.	" a/c " " Oct. 1, " " "		20 00
" 12.	" bal. " " " 1, " " "		30 00
Nov. 9.	" 1 " " Nov. 1, " " "		50 00
			$375 80

E. & O. E.
Savannah, Nov. 10th, 1875.

EDWARD F. NEUFVILLE,
Rece'ver.

Subscribed and sworn to before me this tenth (10th) day of November, A. D. 1875.

WILLARD F. WARNER,
U. S. Deputy Clerk.

And afterwards, to wit, on the thirteenth day of April, A. D. 1876, came Edward F. Neufville, receiver in said cause, & filed his re-
83 port in the words and figures following, to wit:

Receiver's report, No. 4.

Walden vs. Skinner, in account with Edward F. Neufville, receiver.

DR.

1875.

Dec. 11.	To State & county tax, 1875.....		89 00
13.	" gr'd rent 2 q'rs, ⅝5, Monterey.....		28 80

1876.

Febr'y	8.	"	G. A. Howell, self, & other com's	140 00
April	11.	"	city tax, 3 & 4 q'rs, 1875	99 00
"	"	"	gr'd rent, 2 q'rs, $5, Monterey	28 80
"	13.	"	com's on $375 @ 10 %	37 50
"	"	"	balance on hand	30 20
				$453 30

CR.

1875.

Nov.	10.	By balance on hand		78 30
Dec.	6.	" 1 mo. rent to Dec. 1, from Mrs Walden		75 00

1876.

Jan'y	20.	" " " " Jan. 1, " " "		75 00
Febr'y	7.	" " " " Febr'y 1, " " "		75 00
M'ch	17.	" " " " M'ch 1, " " "		75 00
April	5.	" " " " April 1, " " "		75 00
				$453 30
"	13.	" balance on hand		$30 20

E. & O. E.
Savannah, April 13, 1876.

EDWARD F. NEUFVILLE,
Receiver.

Sworn to and subscribed before me this Ap'l 13, 1876.
JAS. McPHERSON, *Clerk.*

84 And afterwards, to wit, on the fourth day of January, A. D. 1876, came Edward F. Neufville, receiver in said cause, and filed his report in the words and figures following, to wit:

Receiver's report, No. 5.

Walden versus Skinner, in account with Edward F. Neufville, receiver.

DR.

1876.

May	13th.	To Jas. F. Moore		8 75
"	"	" J. D. Willink		1 50
July	5.	" C. Hopkins		13 00
"	22.	" gr'd rent to July 19th, 1876		28 80
"	"	" city tax, 1st & 2d q'rs, 1876		99 00
Nov.	6.	" ins. prem., Imperial & Northern		43 50
Dec.	12.	" Sam'l Richards for repairs		4 50
"	23.	" p'd 3 & 4 q'rs city tax, 1876		99 00
"	"	" " State & co. tax		89 00
Jan'y	17.	" com's on $475.00 @ 10 %		47 50
"	"	" balance on hand		70 65
				$505 20

CR.

1876.

April	13th.	By bal. on hand as per last statem't		30 20
May	12.	" 1 mo. rent to May 1, Mrs. Walden		75 00

June	21.	"	1	"	"	"	June	1,	"	"	.....	50 00
July	15.	"	1	"	"	"	July	1,	"	"	.....	50 00
"	"	"	a/c	"	"	"	Aug.	1,	"	"	.....	2 50
"	21.	"	bal.	"	"	"	"	1,	"	"	.....	47 50
	"	"	"	1 mo.	"	"	Sept.	1,	"	"	.....	50 00
85	Sept.	28th.	By 1 mo. rent to Oct. 1 Mrs. Walden									50 00
	Dec.	4th.	"	2	"	"	Dec.	1	"	"	.....	100 00
Dec.	21st.	By 1 mo. rent to Jan'y 1, '77.....										50 00
												$505 20

E. & O. E.

Savannah, Jan'y 1st, 1877.

EDWARD F. NEUFVILLE, *Receiver.*

Subscribed and sworn to before me this Jan'y 4th, 1877.

W. F. WARNER,
U. S. Deputy Clerk.

Testimony for complainant.

Interrogatories propounded to Mrs. Sarah S. Walden, C. D. C. Rhind, Mrs. Frances S. Lewis, Mrs. H. M. R. Montmollin, Mrs. Caroline R. Palin, William Rogers, Miss Georgia Thompson, George Nutall, Dr. R. D. Arnold, and Mrs. J. M. Coss, all material witnesses for the complainant.

1st int'y. Where do you reside; do you know the parties to the above stated cause, and where did you reside during the years 1848, 1849 & 1850?

86 2nd int'y. State whether or not you knew, in their lifetimes, Israel K. Tefft, his wife Penelope W. Tefft, their three sons, Chales E. Tefft, Henry D. Tefft, and William P. Tefft, and Judge Charles S. Henry; and, if you did know them, state what were the legal relations that existed between the said Tefts and said Henry?

3d int'y. State whether or not the said William P. Tefft was ever married; and, if so, who was his wife, and who and where is she now?

4th int'y. State whether or not you knew of the sale of a certain lot of land on St. Julian st., in the city of Savannah, in the year 1849, held by said C. S. Henry and one Greene, in trust for Mrs. P. W. Tefft, for her life, and her three sons; and if you do know of the sale of said property, state what was done with the proceeds of said lot, and if you answer that most of the proceeds went into a house then being erected on lot No. 5, Monterey ward, on S. W. corner Bull and Jones streets in said city, state how you know that the proceeds were put into said house, what part of said proceeds went into said house, for whose use and benefit were they put into said house, and why did not the whole of said proceeds go into said house?

87 5th int'y. State whether or not you knew anything of the uses, purposes and intentions for which said house on said lot No. 5, Monterey ward, in said city, was erected; and if you state that you do, state fully and particularly how you so knew of them, who did you hear talk about them, when, where and at what times did you so hear conversations relating to said house; and state fully all you know concerning the reasons given for building said house, and all you know concerning the funds or monies with which said house was built?

6th int'y. If you say, in answer to the fifth int'y, that you did know of the funds that went to build said house on corner Jones and Bull

streets in Savannah, state all you know concerning it; and if you say that Wm. P. Tefft and Charles E. Tefft furnished certain money to aid in its erection, state whether or not such sum was obtained from the life-insurance policy of Henry D. Tefft, and what was the amount; and if you say that Wm. P. Tefft furnished other money besides his share of the life-insurance policy of his brother Henry D., that also went into said house, state what amount that was; and state fully and particularly all conversations had with and statements made by said I. K. Tefft, Penelope W. Tefft, Charles S. Henry, and Charles E., Henry D.,
88 and Wm. P. Tefft, concerning the uses and purposes for which said house was built, and the sources from which the money was derived that went to build it?

7th int'y. State whether or not you knew anything of the statements made by the above-named parties concerning the purchase and tenure of the said lot No. 5, Monterey ward; and if so, state fully what they were; and whether or not it was understood and agreed between all the said parties that the said lot was held or intended to be held in trust for Mrs. P. W. Tefft and her children, upon similar uses and trusts as had been the old lot on St. Julian street, bought from Elias Fort, and held in trust by Judge Henry and Mr. Greene?

8th int'y. If you state that you know Mrs. Sarah S. Walden, complainant in the above stated suit, state how long you have known her, where was she living when you first knew her, whose wife was she then, and where is she now living, and how long has she resided where she now does. If you say that she was the daughter-in-law of I. K. and P. W. Tefft, state whether or not either of the said last named persons ever, to your own knowledge, admitted any right or title of the said complainant in said house and lot, corner Jones and Bull streets;
89 and, if so, what did they say? State fully, minutely and particularly.

9th int'y. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

B. H. HILL & SON,
HENRY B. TOMPKINS,
Sol's for Complainant.

Objections to complainant's interrogatories.

1. The defendant, Darius S. Skinner, objects to the whole and every part of the said interrogatories as irrevelant and illegal except the 1st and 3rd.

2. He objects more particularly to the second clause of the 2d interrogatory, on the ground that "legal relations" cannot be proved by parol.

3. He objects specially also to so much of the 5th interrogatory as calls for hearsay testimony.

4. He objects specially to so much of the 6th interrogatory as calls for parol proof of the contents of any policy of insurance;
90 and also to so much as calls for hearsay testimony.

5th. He objects also specially to so much of the 7th interrogatory as calls for parol proof of the "tenure" of real property, and to the 2d clause, because the matter inquired of cannot be proved by parol.

Cross-interrogatories.

1. If you say you resided in Savannah during the years 1848, 1849, 1850, state what your age was in the year 1848.

2. If you say, in answer to the second direct interrogatory, that you knew the persons therein mentioned, state when your acquaintance with each of them began, which of them did you know in 1848, 1849 and 1850; had you any special relations with either of them, and, if so, with which, and what were those relations? Give some idea of the degree of intimacy existing in those years between you and either of those persons. What was the age of each of those persons at that time, as nearly as you are able to state. In what occupation was each of them engaged? Was either of them, at that or any other time, ever in the habit of consulting you about his or her private affairs or
91 the disposition of his or her property? If you know of any "legal relations" then existing between Judge Henry and the Teffts, who told you about such "relations"?

3d. If, in answer to the 4th direct interrogatory, you say you know anything about a sale of the lot of land therein mentioned, how do you know that it was held in trust by any one for any one; who told you so; to whom was it sold; and for how much? Was it sold for money or for property taken in exchange; had you anything to do with the transaction; or with the money or property taken in exchange; and, if so, what had you to do with it? If you say you had nothing to do with it, and yet undertake to say what was done with it, who told you about it?

4th. If, in answer to the 5th direct interrogatory, you say that you know anything about the building of a house on lot number 5, Monterey ward, state whether you had anything to do with the building of said house or with the paying for it; if not, who told you about it? Did your informant tell you exactly where the money was obtained to pay for the house? If so, state the various sources from which it was said the money was obtained. Did not Mr. and Mrs. I. K. Tefft live in the house after it was built? How long did they live there?

92 5th. If you say, in answer to the 6th direct interrogatory, that William P. Tefft advanced any money to build said house, were you present when he advanced it; to whom was it paid; how much was it? If you were not present, who told you about it, and at what time were you told; was it before or after the house was built, or while they were building it? How do you know that it was obtained upon a policy of insurance on the life of Henry Tefft?

6th. If, in answer to the 7th direct interrogatory, you undertake to speak of any such understanding or agreement as is therein referred to, do you mean to say that you know of any contract or bargain on that subject; if so, between whom was it made, and when, and where; were you present; if so, at whose request; if not, who told you about it; were you present when the lot was bought or when any deed for it was signed?

7th. Consider carefully your answers to all the direct interrogatories, and state whether the impressions you have with regard to any of the matters inquired of are not mere impressions rather than positive knowledge, and derived rather from conversations with Mrs. Walden than from any personal acquaintance with the matters she has mentioned to you.

93 8th. If you say you knew William P. Tefft in 1849, state what business he was engaged in at that time and to the time of his

death. Did he not fail in his business in that year, or between that year and the time of his death, and become wholly insolvent; was he not insolvent in 1850-'1?

9th. If you say you knew Mrs. Walden in 1849, and that she was then the wife of William P. Tefft, in what house were they living? When Mr. I. K. Tefft moved into the new house, did Mr. & Mrs. W. P. Tefft accompany them? if not, why not? If they did, how long did they stay there, and where did they go when they left? In what house did William P. Tefft die? Has Mrs. Walden lived permanently and continuously in Savannah since her first husband's death? Was she not originally from Rhode Island, and has she not, usually, since her first husband's death, except while she was the wife of Mr. Walden, considered that State as her home, and resided there? When she has been with Mr. & Mrs. I. K. Tefft, or with the latter after the death of the former, do you not know that she was there as a guest?

10th. Did not Mr. & Mrs. I. K. Tefft, from the moment of their removal into the new house until their death, occupy and treat it as their
94 own in all respects? Do you not know that Mrs. Tefft, since her husband's death, during the war and since, has from time to time rented out either the whole house or parts of it to various persons? Did you ever know Mrs. Walden during Mrs. Tefft's life to exercise any acts of ownership over it, by renting it, or otherwise? Did you ever hear, before Mrs. Tefft's death, that she set up any claim to it? Is not all your information about any such claim derived from the statements of Mrs. Walden herself? Do you not know that Mrs. Walden, for some time before Mrs. Tefft's death, was trying to persuade her to give her the house by will?

12th. If you say you ever heard Mrs. Tefft say anything about any claim of Mrs. Walden's to the house, recall with care what it was she did say. Was it not that Mrs. Walden had recently begun to claim some sort of interest in the house, but that she did not understand it, and did not see how there could be any such claim?

13th. To the witnesses William Lemaire and George Nutall especially: Have you not quite recently come to Savannah? In what year? What is your occupation? What opportunities have you had to
95 know anything of Mrs. Tefft's affairs? Is not the witness Lemaire a painter, and the witness Nutall a carpenter, and have you not been employed to do work on Mr. Tefft's house? Is not your knowledge of any of the matters inquired of limited to such stray remarks as you may have heard while at work in the house.

14th. State all you know that can be of service to the defendant as fully as if therefore specially interrogated.

JACKSON, LAWTON & BASINGER,
Sol'rs for D. S. Skinner.

Testimony of Mrs. Sarah S. Walden.

96 To the first interrogatory she answers and deposes as follows, to wit: I reside in Savannah, Georgia; I am the complainant; I am not acquainted with defendant; I resided in Savannah during the years 1848, 1849, and 1850.

To the second interrogatory she answers: I knew in their lifetimes all the persons named in said second interrogatory. Judge C. S. Henry was on the most intimate terms with I. K. Tefft and his family, and was trustee for Mrs. Penelope W. Tefft and her three sons, to wit, Henry D., William P., and Charles E.

To the third interrogatory she answers: William P. Tefft married complainant, who is the present witness.

To the fourth interrogatory she answers: I knew of the sale of a certain house and lot of land situated on Saint Julian street, in the city of Savannah, in the year 1849, held by C. S. Henry and Stephen B. Greene, as trustees for Mrs. P. W. Tefft for her life, and her three sons. The property was sold to John Doyle; the proceeds of said house and lot were reinvested in the new house then being erected on the southwest
97 corner of Jones and Bull streets, lot No. 5, Monterey ward; I knew it from constant conversations with my father and mother, Teffts, husband, Wm. P. Tefft, and brothers, Henry D. and Charles E. Tefft; also the surviving trustee, Judge C. S. Henry, who at all times was intimate in our home. Eighteen hundred dollars ($1,800) of said proceeds went into said new house for the benefit of our said family. The reason the entire proceeds were not put in was because Mrs. P. W. Tefft wished the titles made out wholly and entirely in her name, which Mr. I. K. Tefft refused to do on the ground of injustice to himself and Charles E., my husband, and myself, and my son, Willie. Mrs. P. W. Tefft allowed Mr. I. K. Tefft to use her portion, six hundred dollars ($600), for which he paid interest. In 1851 he returned four hundred dollars ($400) to her (Mrs. P. W.), with which she purchased four (4) shares of bank stock. In 1856 she received the remainder, two hundred dollars (200$), with which she bought one share more of stock, and with the balance she bought furniture for her room.

To the fifth interrogatory she answers: The said house on said lot No. 5, Monterey ward, was erected for the sole use of the entire family, our family; so much so, that before the house was completed each
98 room was set apart for its owner and occupant, the remainder of the said house being used in common together; the said house and lot to remain during the lifetime of the parents (Teffts) undisturbed, and at their death to their sons, or to their sons' heirs; the same trusts attached to, and the same trusteeship existed in relation to this house and lot, and the money so reinvested in the same, as attached to and exists in relation to the aforesaid property hereinbefore mentioned as sold by Henry, trustee, to said John Doyle; which trusteeship the said C. S. Henry was only released from by his death. The old house on St. Julian street was sold, as it was much dilapidated and was becoming unfit for a dwelling, and a larger house was required for the family, as we all lived together, and would have been erected as soon as the lot No. 5, Monterey ward, was purchased, but it could not be erected until said old house was sold; said old house was sold for ($2,400) twenty-four hundred dollars.

To the sixth interrogatory she answers: The money for the erection of said house was furnished by the three sons heretofore named, with the exception of twelve (12) shares of Planters' Bank stock, given by Mr. Wilkins to my father, Mr. I. K. Tefft, the proceeds of which
99 said stock amounted to about eight hundred and fifty dollars ($850.) The portion put in by said sons, from the sale of said old house, was eighteen hundred dollars ($1,800), that is to say, nine hundred ($900) by Charles E., and the same amount by Wm. P., the said Henry D. having died, and his portion having gone to his said two (2) brothers equally, to wit, three hundred dollars to each; the portion put in by said two sons, from the life-insurance policies of their brother Henry D. aforesaid, said policies being for two thousand ($2,000) dollars and for three thousand ($3,000) dollars respectively, amounted to about forty-eight hundred ($4,800) dolls. together, that is to say, the

said aggregate sum of five thousand dollars ($5,000), less expenses of administration of estate said Henry D.; said Wm. P. Tefft also contributed other money to said house, about seven hundred and fifty ($750) dollars, being money which he got from witness, money of her own. It was a frequent topic of conversation between myself and all the parties named in said interrogatory, as to the said house, its uses, its erection, and the purposes for which it was built, which were as already detailed hereinbefore, that is to say, it was erected for a
100 home for our family, the old home becoming unfit for occupation and being too small; and it was understood that the sources of money for building same were as already detailed, and that the trusts of the old house followed into this new house and lot. I selected the site of this new house with my father, Tefft; said lot was purchased by said I. K. Tefft and his said three sons, who paid equally for same to the city of Savannah, the grantor.

To the seventh interrogatory she answers: The said lot No. 5 was purchased and paid for by I. K. Tefft and his said three sons, as stated in 6th interrogatory. The title to new lot to be made out as titles to said old lot had been, Judge Henry continuing and holding the new lot, under the same uses and trusts as the old lot on St. Julian street had been held by him and Mr. Green, to wit, for Mrs. P. W. Tefft and her children.

To the eighth interrogatory she answers: I am complainant inquired of. I now reside in the house involved in this litigation on lot No. 5, Monterey ward, and have resided in said house since its erection to date with exception of my married life, eighteen months, to Mr. Walden. It was always admitted by both I. K. Tefft and Mrs. P.
101 W. Tefft that I was interested in title to said house and lot to the extent hereinbefore mentioned, and it was never denied by them or among our family.

To the ninth interrogatory she answers: After the death of Mr. I. K. Tefft, witness remained with Mrs. P. W. Tefft, and cared for her as far as possible; divided expenses of housekeeping with her, and divided expenses of repairing house, taxes, water-rent, ground-rent, gas, and in fact every expense; and for last two years witness paid all taxes and ground-rent, and divided the other expenses as above. For the last four years of Mrs. P. W. Tefft's life she was feeble in mind and body, except for about a month before her death. In the summer of 1871, I was sent for by her to return immediately—I was temporarily absent—and returned at once, to find her in a deplorable condition of mind and very low in health; by good nursing, she became better in body but not in mind. Within the month before her death she became very clear in mind, and in looking over her papers found Mr. Bassinger's bill, and on being told what it was for she expressed indignation and surprise; said she never intended to so deed the property, and
102 had no right to deed away the rights of another, and Mr. O'Byrne, att'y at law, was sent for and instructed by her (Mrs. P. W.) to frame a will or some other paper to amend the papers drawn by Mr. Bassinger, as aforesaid. Ten days thereafter Mrs. P. W. died, and up to her death, each day of said ten, she inquired why Mr. O'Byrne did not attend to her said instructions, and she (Mrs. P. W.) sent several messengers after him, and sent him his retainer on request. She (Mrs. P. W.) died suddenly, and said paper was not executed. Dr. R. D. Arnold, E. C. Anderson, J. L. Villalonga, Dr. Cohen, J. K. Hines were notified to be present at ten o'clock in the morning of a certain day, to

To the third interrogatory she answers: William P. Tefft married complainant, who is the present witness.

To the fourth interrogatory she answers: I knew of the sale of a certain house and lot of land situated on Saint Julian street, in the city of Savannah, in the year 1849, held by C. S. Henry and Stephen B. Greene, as trustees for Mrs. P. W. Tefft for her life, and her three sons. The property was sold to John Doyle; the proceeds of said house and lot were reinvested in the new house then being erected on the southwest
97 corner of Jones and Bull streets, lot No. 5, Monterey ward; I knew it from constant conversations with my father and mother, Teffts, husband, Wm. P. Tefft, and brothers, Henry D. and Charles E. Tefft; also the surviving trustee, Judge C. S. Henry, who at all times was intimate in our home. Eighteen hundred dollars ($1,800) of said proceeds went into said new house for the benefit of our said family. The reason the entire proceeds were not put in was because Mrs. P. W. Tefft wished the titles made out wholly and entirely in her name, which Mr. I. K. Tefft refused to do on the ground of injustice to himself and Charles E., my husband, and myself, and my son, Willie. Mrs. P. W. Tefft allowed Mr. I. K. Tefft to use her portion, six hundred dollars ($600), for which he paid interest. In 1851 he returned four hundred dollars ($400) to her (Mrs. P. W.), with which she purchased four (4) shares of bank stock. In 1856 she received the remainder, two hundred dollars (200$), with which she bought one share more of stock, and with the balance she bought furniture for her room.

To the fifth interrogatory she answers: The said house on said lot No.
5, Monterey ward, was erected for the sole use of the entire family, our family; so much so, that before the house was completed each
98 room was set apart for its owner and occupant, the remainder of the said house being used in common together; the said house and lot to remain during the lifetime of the parents (Teffts) undisturbed, and at their death to their sons, or to their sons' heirs; the same trusts attached to, and the same trusteeship existed in relation to this house and lot, and the money so reinvested in the same, as attached to and exists in relation to the aforesaid property hereinbefore mentioned as sold by Henry, trustee, to said John Doyle; which trusteeship the said C. S. Henry was only released from by his death. The old house on St. Julian street was sold, as it was much dilapidated and was becoming unfit for a dwelling, and a larger house was required for the family, as we all lived together, and would have been erected as soon as the lot No. 5, Monterey ward, was purchased, but it could not be erected until said old house was sold; said old house was sold for ($2,400) twenty-four hundred dollars.

To the sixth interrogatory she answers: The money for the erection of said house was furnished by the three sons heretofore named, with the exception of twelve (12) shares of Planters' Bank stock, given by Mr. Wilkins to my father, Mr. I. K. Tefft, the proceeds of which
99 said stock amounted to about eight hundred and fifty dollars ($850.) The portion put in by said sons, from the sale of said old house, was eighteen hundred dollars ($1,800), that is to say, nine hundred ($900) by Charles E., and the same amount by Wm. P., the said Henry D. having died, and his portion having gone to his said two (2) brothers equally, to wit, three hundred dollars to each; the portion put in by said two sons, from the life-insurance policies of their brother Henry D. aforesaid, said policies being for two thousand ($2,000) dollars and for three thousand ($3,000) dollars respectively, amounted to about forty-eight hundred ($4,800) dolls. together, that is to say, the

said aggregate sum of five thousand dollars ($5,000), less expenses of administration of estate said Henry D.; said Wm. P. Tefft also contributed other money to said house, about seven hundred and fifty ($750) dollars, being money which he got from witness, money of her own. It was a frequent topic of conversation between myself and all the parties named in said interrogatory, as to the said house, its uses, its erection, and the purposes for which it was built, which were as already detailed hereinbefore, that is to say, it was erected for a
100 home for our family, the old home becoming unfit for occupation and being too small; and it was understood that the sources of money for building same were as already detailed, and that the trusts of the old house followed into this new house and lot. I selected the site of this new house with my father, Tefft; said lot was purchased by said I. K. Tefft and his said three sons, who paid equally for same to the city of Savannah, the grantor.

To the seventh interrogatory she answers: The said lot No. 5 was purchased and paid for by I. K. Tefft and his said three sons, as stated in 6th interrogatory. The title to new lot to be made out as titles to said old lot had been, Judge Henry continuing and holding the new lot, under the same uses and trusts as the old lot on St. Julian street had been held by him and Mr. Green, to wit, for Mrs. P. W. Tefft and her children.

To the eighth interrogatory she answers: I am complainant inquired of. I now reside in the house involved in this litigation on lot No. 5, Monterey ward, and have resided in said house since its erection to date with exception of my married life, eighteen months, to Mr. Walden. It was always admitted by both I. K. Tefft and Mrs. P.
101 W. Tefft that I was interested in title to said house and lot to the extent hereinbefore mentioned, and it was never denied by them or among our family.

To the ninth interrogatory she answers: After the death of Mr. I. K. Tefft, witness remained with Mrs. P. W. Tefft, and cared for her as far as possible; divided expenses of housekeeping with her, and divided expenses of repairing house, taxes, water-rent, ground-rent, gas, and in fact every expense; and for last two years witness paid all taxes and ground-rent, and divided the other expenses as above. For the last four years of Mrs. P. W. Tefft's life she was feeble in mind and body, except for about a month before her death. In the summer of 1871, I was sent for by her to return immediately—I was temporarily absent—and returned at once, to find her in a deplorable condition of mind and very low in health; by good nursing, she became better in body but not in mind. Within the month before her death she became very clear in mind, and in looking over her papers found Mr. Bassinger's bill, and on being told what it was for she expressed indignation and surprise; said she never intended to so deed the property, and
102 had no right to deed away the rights of another, and Mr. O'Byrne, att'y at law, was sent for and instructed by her (Mrs. P. W.) to frame a will or some other paper to amend the papers drawn by Mr. Bassinger, as aforesaid. Ten days thereafter Mrs. P. W. died, and up to her death, each day of said ten, she inquired why Mr. O'Byrne did not attend to her said instructions, and she (Mrs. P. W.) sent several messengers after him, and sent him his retainer on request. She (Mrs. P. W.) died suddenly, and said paper was not executed. Dr. R. D. Arnold, E. C. Anderson, J. L. Villalonga, Dr. Cohen, J. K. Hines were notified to be present at ten o'clock in the morning of a certain day, to

wit, the 11th day of September, 1873, but death intervened before that hour. I remember nothing further of benefit to either party.

SARAH S. WALDEN.

Sworn to and subscribed before us this 29th day of August, 1874.

G. A. HOWELL,
Commissioner.
WM. U. GARRARD,
Com'r.

Testimony of C. D. C. Rhind.

1st. To the first direct interrogatory the witness answers: I
103 reside in Savannah, Ga.; I know Mrs. Walden, but do not know Mr. Skinner. I resided in Savannah during the years mentioned.

2nd. To the second direct interrogatory he answers: I knew all the parties mentioned in their lifetime. I do not know what, if any, legal relations existed between the said Tefft and Judge Henry.

3d. To the third direct interrogatory the witness answers: Mr. Wm. P. Tefft was married to Miss Sarah Sessions, who resides now in Savannah, and is Mrs. Sarah Walden.

4th. To the fourth direct interrogatory the witness answers: I knew of the sale of the said lot of land on St. Julian street, in Savannah, about the year 1849, but do not know whether the said Henry and Green were trustees of Mrs. Tefft and her three sons. I was told by the Tefft family that the proceeds of said sale were to be applied to the building of the house on the said corner of Jones and Bull streets. I don't know that said proceeds were so used, but was so informed. I do not remember ever being told that a portion of said proceeds
104 did not go into the building of said house. I was told that said proceeds were used in said house for the use and benefit of the whole Tefft family; that is, for Mr. and Mrs. Tefft and children.

5th. To the fifth direct interrogatory the witness answers: I was told by the family generally that said house was built for the uses and purposes of a dwelling for the whole family. I heard conversations in reference to said house among the family at their residence on St Julian street during the time said house was being built. I heard Mr. Wm. P. Tefft speak of said house and its uses, &c, about the same time, in his office. I don't remember any special reason given for building said house. I understood from the same source that said house was built from the proceeds of said sale, and from insurance money on the life of Henry Tefft, and about twelve hundred dollars belonging to Wm. P. Tefft.

6th. To the sixth direct interrogatory the witness answers: I do not know the amount of interest of the different members of family in said life insurance money. I don't know whether Charles E. Tefft fur-
105 nished any other money to build said house than his interest in said insurance money. I have already stated that I was told Wm. P. Tefft furnished about (1,200$) twelve hundred dollars of his money to help build said house besides his interest in said insurance money. All other matters inquired of in this interrogatory I think I have answered as fully as I can.

7th. To the seventh direct interrogatory the witness answers: I know nothing of the tenure of said lot No. 5, Monterey ward, nor anything of its uses and trusts, &c., but always understood, as already stated, that it was for the benefit of the Tefft family.

8th. To the eighth direct interrogatory the witness answers: I have no recollection of having known Mrs. Walden before her marriage with William P. Tefft, since which time I have been acquainted with her. When I first knew her she lived in Savannah, to the best of my recollection. She was then the wife of William P. Tefft. To the best of my knowledge, Savannah has been her residence since her said marriage. I do not know how long she has resided where she now resides. I never heard the subject of Mrs. Walden's right or title to said property
106 raised by Mr. or Mrs. I. K. Tefft that I remember.

9th. To the ninth direct interrogatory the witness answers: I know nothing further of benefit to either party in this cause.

1st. To the first cross-interrogatory the witness answers: In 1848 I was twenty-six years old.

2nd. To the second cross-interrogatory the witness answers: My intimate acquaintance with the parties mentioned commenced in 1842, and my acquaintance with Mrs. Walden commenced from the time of her marriage with Wm. P. Tefft. I knew all the parties mentioned in 1848, 1849, and 1850, and was more particularly intimate with Wm. P. Tefft, and was his daily companion. Henry Tefft was older than I, Wm. P. about my age, and Charles some years younger than I. I can't state the ages of the different parties with any accuracy. In 1848 or thereabouts Mr. I. K. Tefft was in the Bank of the State of Georgia;
107 Henry Tefft had been clerk for Andrew Law & Co.: William P. was a merchant, and Charlie was a lawyer. William P. Tefft told me of all his business of every nature, and consulted me in reference thereto.

3d. To the third cross-interrogatory the witness answers: I was informed by the Tefft family, as already stated, that the proceeds of the sale of the house on St. Julian street was to be put in the building of the said house on corner Bull and Jones streets. I do not remember for what said house sold, or whether any property was taken in exchange therefor, nor to whom it was sold; nor did I have anything to do with any portion of the transaction. Mr. and Mrs. Tefft, and William Tefft, chiefly, told me what was to be done with the proceeds of said sale.

4th. To the fourth cross-interrogatory the witness answers: I had nothing to do with the building of nor paying for said house. I have already stated the source of my information in reference to said house and the money used to build it. Mr. & Mrs. I. K. Tefft resided in said house from the time it was finished till the time of their death.
108 5th. To the fifth cross-interrogatory the witness answers: I was not present when said William Tefft advanced the money. Don't know to whom it was paid, nor how much it was, to my own knowledge. I was generally informed by the family, and by Mr. & Mrs. William P. Tefft especially, while said house was being built, that William P. Tefft furnished about twelve hundred dollars, besides his interest in said insurance money, to help build said house. I have already answered as fully as I can the remainder of this interrogatory.

6th. To the sixth cross-interrogatory the witness answers: I have already stated as fully as I can all I know of the matters referred to in this interrogatory. I was not present when said lot was bought, nor did I see any deed signed.

7th. To the seventh cross-interrogatory the witness answers: I have had no conversations whatever with Mrs. Walden on the subjects connected with this case, and my answers are based upon recollections of

wit, the 11th day of September, 1873, but death intervened before that hour. I remember nothing further of benefit to either party.

SARAH S. WALDEN.

Sworn to and subscribed before us this 29th day of August, 1874.

G. A. HOWELL,
Commissioner.
WM. U. GARRARD,
Com'r.

Testimony of C. D. C. Rhind.

1st. To the first direct interrogatory the witness answers: I
103 reside in Savannah, Ga.; I know Mrs. Walden, but do not know Mr. Skinner. I resided in Savannah during the years mentioned.

2nd. To the second direct interrogatory he answers: I knew all the parties mentioned in their lifetime. I do not know what, if any, legal relations existed between the said Tefft and Judge Henry.

3d. To the third direct interrogatory the witness answers: Mr. Wm. P. Tefft was married to Miss Sarah Sessions, who resides now in Savannah, and is Mrs. Sarah Walden.

4th. To the fourth direct interrogatory the witness answers: I knew of the sale of the said lot of land on St. Julian street, in Savannah, about the year 1849, but do not know whether the said Henry and Green were trustees of Mrs. Tefft and her three sons. I was told by the Tefft family that the proceeds of said sale were to be applied to the building of the house on the said corner of Jones and Bull streets. I don't know that said proceeds were so used, but was so informed. I do not remember ever being told that a portion of said proceeds
104 did not go into the building of said house. I was told that said proceeds were used in said house for the use and benefit of the whole Tefft family; that is, for Mr. and Mrs. Tefft and children.

5th. To the fifth direct interrogatory the witness answers: I was told by the family generally that said house was built for the uses and purposes of a dwelling for the whole family. I heard conversations in reference to said house among the family at their residence on St Julian street during the time said house was being built. I heard Mr. Wm. P. Tefft speak of said house and its uses, &c, about the same time, in his office. I don't remember any special reason given for building said house. I understood from the same source that said house was built from the proceeds of said sale, and from insurance money on the life of Henry Tefft, and about twelve hundred dollars belonging to Wm. P. Tefft.

6th. To the sixth direct interrogatory the witness answers: I do not know the amount of interest of the different members of family in said life insurance money. I don't know whether Charles E. Tefft fur-
105 nished any other money to build said house than his interest in said insurance money. I have already stated that I was told Wm. P. Tefft furnished about (1,200$) twelve hundred dollars of his money to help build said house besides his interest in said insurance money. All other matters inquired of in this interrogatory I think I have answered as fully as I can.

7th. To the seventh direct interrogatory the witness answers: I know nothing of the tenure of said lot No. 5, Monterey ward, nor anything of its uses and trusts, &c., but always understood, as already stated, that it was for the benefit of the Tefft family.

8th. To the eighth direct interrogatory the witness answers: I have no recollection of having known Mrs. Walden before her marriage with William P. Tefft, since which time I have been acquainted with her. When I first knew her she lived in Savannah, to the best of my recollection. She was then the wife of William P. Tefft. To the best of my knowledge, Savannah has been her residence since her said marriage. I do not know how long she has resided where she now resides. I never heard the subject of Mrs. Walden's right or title to said property
106 raised by Mr. or Mrs. I. K. Tefft that I remember.

9th. To the ninth direct interrogatory the witness answers: I know nothing further of benefit to either party in this cause.

1st. To the first cross-interrogatory the witness answers: In 1848 I was twenty-six years old.

2nd. To the second cross-interrogatory the witness answers: My intimate acquaintance with the parties mentioned commenced in 1842, and my acquaintance with Mrs. Walden commenced from the time of her marriage with Wm. P. Tefft. I knew all the parties mentioned in 1848, 1849, and 1850, and was more particularly intimate with Wm. P. Tefft, and was his daily companion. Henry Tefft was older than I, Wm. P. about my age, and Charles some years younger than I. I can't state the ages of the different parties with any accuracy. In 1848 or thereabouts Mr. I. K. Tefft was in the Bank of the State of Georgia;
107 Henry Tefft had been clerk for Andrew Law & Co.; William P. was a merchant, and Charlie was a lawyer. William P. Tefft told me of all his business of every nature, and consulted me in reference thereto.

3d. To the third cross-interrogatory the witness answers: I was informed by the Tefft family, as already stated, that the proceeds of the sale of the house on St. Julian street was to be put in the building of the said house on corner Bull and Jones streets. I do not remember for what said house sold, or whether any property was taken in exchange therefor, nor to whom it was sold; nor did I have anything to do with any portion of the transaction. Mr. and Mrs. Tefft, and William Tefft, chiefly, told me what was to be done with the proceeds of said sale.

4th. To the fourth cross-interrogatory the witness answers: I had nothing to do with the building of nor paying for said house. I have already stated the source of my information in reference to said house and the money used to build it. Mr. & Mrs. I. K. Tefft resided in said house from the time it was finished till the time of their death.
108 5th. To the fifth cross-interrogatory the witness answers: I was not present when said William Tefft advanced the money. Don't know to whom it was paid, nor how much it was, to my own knowledge. I was generally informed by the family, and by Mr. & Mrs. William P. Tefft especially, while said house was being built, that William P. Tefft furnished about twelve hundred dollars, besides his interest in said insurance money, to help build said house. I have already answered as fully as I can the remainder of this interrogatory.

6th. To the sixth cross-interrogatory the witness answers: I have already stated as fully as I can all I know of the matters referred to in this interrogatory. I was not present when said lot was bought, nor did I see any deed signed.

7th. To the seventh cross-interrogatory the witness answers: I have had no conversations whatever with Mrs. Walden on the subjects connected with this case, and my answers are based upon recollections of

information given to me by members of the Tefft family, and are not mere impressions. I had one conversation with Mrs. Walden in
109 which she told me the title to said property was in dispute, but nothing that I have stated in my answers to these interrogatories is based upon anything she told me or spoke to me about.

8th. To the eight cross-interrogatory the witness answers: During or about 1849, William P. Tefft was a commission merchant, and on up to the time of his death. He became insolvent between 1849 and the time of his death, which, I think, was in 1851. To the best of my knowledge and belief he was not insolvent in 1850 unless he died in that year. I know he was not insolvent the winter and spring before his death.

9th. To the ninth cross-interrogatory the witness answers: In 1849 Mrs. Walden was living with her husband, Wm. P. Tefft, either at the corner of Jones and Bull streets or in a tenement house on the southwest corner of St. Julian and Lincoln streets. Mr. and Mrs. W. P. Tefft accompanied Mr. I. K. Tefft when he moved to the new house. I don't know how long they lived there, but they had had two children born to them when they moved to the house on Lincoln and St. Julian streets. William P. Tefft died at Indian Spring and was buried from the
110 house on corner Jones and Bull streets. Mrs. Walden has generally lived in Savannah since her first husband's death, but I don't know whether she has resided here constantly. I have seen very little of Mrs. Walden since Mr. I. K. Tefft's death. She was originally from one of the New England States, I don't remember which. I have never heard that she considered any other place than Savannah her home since her first marriage. I have always considered that she lived with Mr. I. K. Tefft as a member of the family. She was always treated as a member of the family. After his death I don't know what position she occupied in the house.

10th. To the tenth cross interrogatory the witness answers: Mr. and Mrs. I. K. Tefft, from the time of their removal into the new house until their death, occupied and treated as their own in all respects so far as I know. I have understood that Mrs. Tefft, since her husband's death, has rented out portions of the house to various parties. I never knew of Mrs. Walden's, during Mrs. Tefft's life, exercising any acts of ownership over the house by renting it or otherwise. I was not in any position to know anything on this subject, as I very rarely called there after Mr. I. K. Tefft's death. I never heard before Mrs. Tefft's death that Mrs. Walden had
111 set up any claim to the house. I have derived no information whatever on any subject from Mrs. Walden. I do not know that Mrs. Walden tried to persuade Mrs. Tefft to give her the house by will.

12th. To the twelfth cross-interrogatory the witness answers: Mrs. Tefft never said anything to me about Mrs. Walden's claim on the house.

13th. To the thirteenth cross-interrogatory the witness answers: I have lived in Savannah for many years—since 1841. At present I am not in business. I have already stated that my long intimacy with the Tefft family is the basis of *of* my information about the matters in this case. I don't know the witness mentioned. Was never employed to work on the house.

14th. To the fourteenth cross-interrogatory the witness answers: I know nothing further.

C. D. C. RHIND.

Answered, sworn to, and subscribed before us this 28th day of October, A. D. 1874.

G. A. HOWELL, *Com'n'r.* [L. S]
B. A. DENMARK, *Com'n'r.* [L. S.]

112 *Testimony of Mrs. Harriett M. R. Montmollin and Mrs. Caroline R. Palin.*

PHILADELPHIA BAR ASSOCIATION

To the 1st interrogatory they answer: We reside in Savannah. We know said parties, and resided in Savannah during the said years, 1848, 1849, and 1850.

To the 2d interrogatory they answer: We knew all the parties mentioned in their lifetimes; said Henry was trustee for Mrs. P. W. Tefft and her three (3) sons.

To the 3d interrogatory they answer: William P. Tefft was married to Miss Sarah Sessions; she is now the widow of Mr. Charles C. Walden, and resides in her own home, southwest corner of Jones and Bull streets, Savannah, Georgia.

To the 4th direct interrogatory said witnesses answer: We do know of the sale of said lot on St. Julian street in 1849, as mentioned, which was held as mentioned in said interrogatory; the proceeds of said lot when sold were given to Judge C. S. Henry for the erection of the new house on southwest corner of Jones and Bull streets, Savannah, Georgia; we learned this from the Tefft family and Judge Henry.

113 We were present when Mrs. P. W. Teft refused to permit her part of the said proceeds to go into said new house, unless the titles were taken entirely in her own name; the understanding among the Tefft family was that said proceeds went into said house for the common benefit of all said family.

To the 5th direct interrogatory they answer: The new house on said lot No. 5, Monterey ward, was erected for the sole use of the entire family; we learned this from repeated conversations with every member of the family. The old house was too small, and for this reason the new one was erected. Besides the proceeds of the old house as mentioned, there went into the new house the life-insurance money of Henry Tefft, which belonged to William and Charles Tefft, and which amounted to five thousand (5,000$) dollars. Besides, Mr. I. K. Tefft told us that several hundred dollars belonging to William P. Tefft's wife, Sarah (now complainant), also went into said house. Besides, there went into said house, as stated to us by Mr. I. K. Tefft, the proceeds of sale of the stock given him by Mr. Wilkins.

To the sixth direct interrogatory they answer: We have already stated all we know as to what monies went into the erection of

114 said new house; we have already stated all we know concerning said life policy of Henry D. Tefft, and also concerning the other money furnished by William P. Tefft. Mr. I. K. Tefft told us that as said William and Charles had put into said house the money which they received from the life-insurance policy of their brother Henry D., his (Henry's) interest in said house would belong to them, viz, William and Charles. We have already stated, and now repeat, that we learned from all said parties that said new house was built for the use of the entire family.

To the seventh interrogatory they answer:

Mrs. Palin, save what she has already answered, knows nothing further as to this question.

Mrs. Montmollin says: I was at the old house when Judge Henry called to get the money to pay for the new lot, No. 5, Monterey ward, Mr. I. K. Tefft and his three sons each paid sixty (60$) dollars to Judge Henry, and it was then agreed upon by all parties that lot No. 5, Monterey ward, was to be held for the same uses and trusts as the old lot on St. Julian street, viz, for Mrs. P. W. Tefft and her three sons.

To the eighth interrogatory they answer: We have known Mrs. Walden for past (30) thirty years; when we first knew her she was
115 living at North and visiting Mrs. P. W. Tefft; thereafter we knew her as wife of Wm. P. Tefft; she lives now at her own home on Southwest corner Jones and Bull streets, Savannah, Ga., where she has resided for twenty-four (24) years, with exception of about eighteen (18) months of married life with Mr. Walden on Perry street, Savannah; she (Mrs. Walden) was daughter-in-law of I. K. and Mrs. P. W. Tefft; they (Mr. I. K. and Mrs. P. W.) acknowledged to us at different times the right, title, and interest of complainant in said house and lot corner Jones and Bull streets.

To the ninth direct interrogatory they answer: What we have stated we have so done of our own knowledge; we were very intimate and near neighbors to this Tefft family. A short time previous to her death Mrs. P. W. Tefft told us that she had sent for Sarah (that is, Mrs. Walden) to come and be with her as long as she lived to look after her (Sarah's) interests and rights; that they were trying to make her (Mrs. P. W.) give away what belonged to Mrs. Walden.

Mrs. Montmollin further states: That a short time before the marriage of Mr. Walden to Mrs. Sarah Tefft Mr. I. K. Tefft told me, as did Mrs. P. W. Tefft, that they had feared that Mr. Walden, after
116 marriage, would demand his wife's portion of said house in question, and that they would have to give it up; but that Mr. Walden had relieved their fears, stating that he had married for a wife, not for "bricks and mortar."

To the 1st cross-interrogatory Mrs. Montmollin says: In 1848 she was forty years old, and Mrs. Palin says in said year she was thirty-two (32) years old.

To the second cross-interrogatory they say: Our acquaintance with said parties began about the same time, say about forty (40) years ago. We knew them all in the years inquired of, except Henry D., whom we knew in 1848; he died in (1849) eighteen hundred and forty-nine; our relations were simply those arising between intimate friends, meeting very frequently, almost daily. Mr. I. K. and his wife were about fifty-four (54) years of age in 1848; Henry D. was about thirty-one (31) years old, William was about (28) twenty-eight years old, and Charles a year or two younger than William; Judge Henry was a middle-aged man, a lawyer; Mr. I. K. Tefft was "teller" in the State Bank; Henry D. was clerk
117 for Andrew Low; Charles was a law-student, and William was a clerk. None of said parties consulted us as inquired of, but talked to us as we have already set forth. The parties themselves told us of the legal relations existing between the Tefft's and Judge Henry.

To the 3d cross-interrogatory they answer: We heard what we have stated as to said lot being held in trust from the Tefft's and Judge Henry. Said lot was sold to Mr. John Doyle for between two and three thousand dollars (2,000 to 3,000$) in money. We had nothing to do with said transaction in any respect. The Tefft's told us about it.

To the 4th cross-interrogatory they answer: We had nothing to do with building or paying for said house. We learned all we have stated from Judge Henry and the Tefft's, and we have stated the sources where the money came from, and our informants were as above. Mr. and Mrs. I. K. Tefft did live in said house until they died.

To the 5th cross-interrogatory they answer: We were not present when Wm. P. Tefft advanced or paid money to build said house. Mr. and Mrs. I. K. Tefft told us of the same repeatedly while the
118 house was being built and afterwards. We have already stated

our information, from Mr. and Mrs. I. K. Tefft, as to the life policy on life of said Henry D.

To the 6th cross-interrogatory they say:

We do not know of any contract or bargain, as inquired of.

Mrs. Montmollin answers: I was present, as detailed in my answer to 7th direct interrogatory, when money was paid to Judge Henry to purchase said lot.

Both witnesses say: We were not present when said lot was bought, nor when any deed for it was signed.

To the 7th cross-interrogatory they answer: What we have stated has been from "positive knowledge." We have derived little from Mrs. Walden, as she was more reticent than the others of the family.

To the 8th cross-interrogatory they answer: We think Mr. William P. Tefft was a merchant in some kind of business in 1849; do not remember what kind of business then or afterwards; only know from hearsay that he became insolvent; do not know as to date or year.

To the 9th cross-interrogatory they answer: Mr. and Mrs. Wil-
119 liam P. Tefft lived in 1849 in the new house referred to, with the rest of the family, and accompanied Mr. I. K. Tefft when he moved there; they remained there a year or two and removed to a house on St. Julian street, near Cassell's Row. William P. Tefft died at the Indian Springs, Georgia. Mrs. Walden has lived in Savannah as inquired of, except occasional visits off; she was originally from Rhode Island; she has considered Savannah her home since she married Mr. Tefft; she was not with Mr. nor Mrs. I. K. Tefft as a guest, but as a daughter.

To the 10th cross-interrogatory, they answer: Mr. and Mrs. I. K. Tefft did use, occupy, and treat said new house as their own in all respects. Mrs. Tefft has, at various times, rented said house to parties. Mrs. Walden was consulted about renting, and received her portion of the rent. We heard repeatedly of Mrs. Walden's claim to the house from every member of the Tefft family, including herself. We do not know of Mrs. Walden's seeking to persu'de Mrs. Tefft to give her the house by will.

To the 12th cross-interrogatory they answer: Mrs. Tefft acknowledged to us Mrs. Walden's claim on said house repeatedly, and said that she (Mrs. Tefft) had no right to will the property, because it was not hers (Mrs. Tefft's).

120 To the 13th cross-interrogatory they answer.

To the 14th cross interrogatory they answer: They know nothing further to benefit defendant.

CAROLINE PALIN.
H. M. R. MONTMOLLIN.

Sworn to and subscribed before us this 4th day of November, 1874.

WM. U. GARRARD,
Commissioner.
G. A. HOWELL,
Commissioner.

The testimony of Mrs. Frances S. Lewis.

1st. To the first direct interrogatory the witness answering saith: I reside now at the corner of Bull and Charlton streets, Savannah, Georgia, and know Mrs. Walden. In 1848, 1849, and 1850 I resided where I now reside.

2d. To the second direct interrogatory the witness : I knew, during their lifetimes, all the parties mentioned. Judge Charles S.

Henry was my only brother, and was trustee for Mrs. P. W. Tefft and her three sons.

121 3d. To the third direct interrogatory the witness answers: Mr. William P. Tefft was married to Miss Sarah Sessions, who is now the widow of Mr. Charles C. Walden, and she now resides in the city of Savannah.

4th. To the fourth direct interrogatory the witness answers: I knew of the sale in 1849 of the house and lot mentioned which were held in trust by Judge Henry and Mr. Green for Mrs. P. W. Tefft during her life, and her three sons. The proceeds of said house and lot were given to Judge Henry to be used in payment of the house on the southwest corner Jones and Bull streets. Judge Henry and Mr. I. K. Tefft were on the most intimate terms, and I learned through them what I have stated in reference to said proceeds, which were put into said property for the use and benefit of the entire Tefft family. I don't know whether or not the whole of said proceeds went into said property, but the old house was sold for the purpose of erecting the new.

5th. To the fifth direct interrogatory the witness answers: The new house was erected as a home for the Tefft family as they always

122 resided together. I have heard Judge Henry and Mr. and Mrs. Tefft speak of what I have already said in reference to the building of said new house, the funds with which it was built, and its uses and trusts in their own house repeatedly. The reasons I have heard given are, the family wanted a larger house, as the house they then occupied was too small and was too old to be repaired.

6th. To the sixth direct interrogatory the witness answers: I have always heard from Judge Henry and Mr. I. K. Tefft that Wm. P. and Charles Tefft not only gave their portion from the old house for the erection of the new, but also their money from the life insurance of their brother Henry. I have always understood that the policies on the life of Henry Tefft amounted to five thousand dollars. I have already stated that I heard repeatedly from Judge Henry and Mr. and Mrs. I. K. Tefft that said new house was held upon the same uses and trusts as had been the old house and lot on St. Julian street.

7th. To the seventh direct interrogatory the witness answers: I have always heard from Mr. and Mrs. Tefft and Judge Henry that Mr. Tefft and his sons paid for lot No. 5, Monterey ward, Judge C. S. Henry

123 holding it in trust the same as the old house and lot as already stated.

8th. To the eighth direct interrogatory the witness answers: I have known Mrs. Walden ever since she came to Savannah as Mr. William Tefft's bride. She was then living with her husband's parents on St. Julian street. She now lives on the southwest corner of Bull and Jones streets in Savannah, and has resided there since said new house was finished with the exception of her married life with Mr. Charles Walden. After the death of her first husband I have often heard Mr. and Mrs. I. K. Tefft say it was her home and she had a right to it as any other member of the family. On one occasion when Mrs. Tefft had company and expected more, I heard her say that she would have no room for company, as she could not turn Mrs. Walden out of her room and would not, as it was Mrs. Walden's room, and she (Mrs. Tefft) had no right to turn her out. While Mrs. Walden was North, Mrs. Tefft told me that if she (Sarah) would only come back she should have all her rights. This was during the last sickness of Mrs. Tefft.

9th. To the ninth direct the witness answers: I know nothing further of benefit to either party.

124 1st. To the first cross the witness answers: In 1848 I was forty years old.

2d. To the second cross the witness answers: My acquaintance with the Tefft family, as near as I can remember, commenced in 1834 or 1835. In 1848, 1849, and 1850 I knew all the parties mentioned. I was very intimate in the Tefft family, and Judge Henry was my brother. I was as intimate in the family as friends could be. I do not remember the ages of the said parties at that time. Mr. and Mrs. Tefft and Judge Henry were older than I was, and the three sons younger. Mr. I. K. Tefft was a bank officer, Judge Henry a lawyer, as was also Charles Tefft; William P. and Henry Tefft were in mercantile business. None of the parties were in the habit of consulting me about their business or private affairs, but matters pertaining to this new house were freely and frequently discussed among the Teffts and Judge Henry in my presence. Judge Henry told me he was trustee of Mrs. Tefft and her sons.

3d. To the third cross the witness answers: I knew from Judge Henry and Mr. and Mrs. Tefft that the lot mentioned was held in trust for Mrs. Tefft and her sons. The house mentioned was sold to Mr. John
125 Doyle. I don't know for what amount, nor whether for money or property taken in exchange. I had nothing whatever to do with the transaction. I have already stated the sources of my information in reference to this matter.

4th. To the fourth cross the witness answers: Mr. and Mrs. I. K. Tefft lived in said new house from the time it was built to their death. I have already answered the rest of this question as fully as I can.

5th. To the fifth cross the witness answers: I was not present when William P. Tefft advanced money to build said new house, and don't know how much it was. Judge Henry told me about it while the house was being built; also that William P. Tefft's portion of his brother Henry's life-insurance money was put into said house. This information was also derived from Mr. Tefft.

6th. To the sixth cross-interrogatory the witness answers: I was not present, and I have already stated all I know in reference to this question.

7th. To the seventh cross the witness answers: What I have
126 already stated is not derived from impressions, but positive knowledge, and from the conversations of Judge Henry, Mr. and Mrs. Tefft, and not from Mrs. Walden.

8th. To the eighth cross the witness answers: W. P. Tefft was a merchant in 1848, but I knew nothing about his business affairs.

9th. To the ninth cross the witness answers: In 1849, Mrs. Walden, with her husband, Wm. P. Tefft, was living in said new house. Taey accompanied Mr. and Mrs. I. K. Tefft when they moved into the new house. They remained there for some time. Don't remember how long. W. P. Tefft died at the Indian Spring. Mrs. Walden has lived in Savannah permanently since her first husband's death, and has considered this her home. She has made frequent visits off. She came from Rhode Island, but has not considered that her home since her first husband's death, when Mrs. Walden has been with Mr. and Mrs. I. K. Tefft, and the latter, after the death of the former. She was there not as a guest, but as a member of the family.

10th. To the tenth cross the witness answers: Mr. and Mrs. I. K. Tefft, after they moved into said new house, treated and occupied it as their own in all respects. Mrs. Tefft has, since the war, rented out

portions of said house to various persons. I never knew Mrs.
127 Walden to rent out or otherwise treat said house as her own during Mrs. Tefft's life. Years before Mrs. Tefft's death Mrs. Walden repeatedly put in and spoke of her claim to and interest in said property. I have already fully stated the sources of my information in reference to Mrs. Walden's claim. I never knew that Mrs. Walden ever tried to persuade Mrs. Tefft to give her said property by will.

12th. To the twelfth cross the witness answers: I have already stated all I know on the subject, or intend to say.

14th. To the fourteenth cross the witness answers: I know nothing further.

F. S. LEWIS.

Answered, sworn to, and subscribed before us at Savannah, Georgia, this 13th day of November, A. D. 1874.

G. A. HOWELL, *Com'n'r.* [L. S]
B. A. DENMARK, *Com'n'r.* [L. S]

The testimony of William Rogers.

1st. To the first direct int. the witness, answering, saith: I live in Savannah. I know Mrs. Walden. I was residing in Savannah in 1849 and 1850, and in, think also, in 1848.

128 2d. To the second direct int. the witness, answering, saith: I know all the parties mentioned, but did not know the legal relations between said Henry and said Teffts.

3d. To the third direct int. he answers: Wm. P. Tefft was married to the present Mrs. Walden, who now lives in Savannah. At least Mrs. Walden was considered his wife, though I did not see them married.

4th. To the 4th direct int. he answers: I know nothing of the matters referred to in this interrogatory.

5th. In the 5th direct int. he answers: I know nothing of the matters referred to in this interrogatory.

6th. To the sixth direct int. he answers: Several years after the erection and completion of the house on the corner of Jones and Bull streets, in which the Tefft family was then living, Mr. I. K. Tefft went with me to a house I was then building in the city, and, while conversing about houses, he said to me that he had built his house too large, and further said that, had it not been for the help which he had received from his sons, he would not have been able to pay for it; and, if my recol-
129 lection serves me right, he *he* spoke more particularly of the help he got from William P. Tefft. This conversation referred to the house on the S. W. corner of Jones and Bull streets, in Savannah, Ga. This is all that I know about the matter.

7th. To the seventh direct int. he answers: I know nothing of the matters referred to in this interrogatory.

8th. To the eighth direct int. he answers: I have known Mrs. Walden ever since she came to Savannah as the wife of W. P. Tefft. She now lives in the house on corner of Jones and Bull streets, but don't know how long she has lived there. I know nothing of the other matters inquired of in this interrogatory.

9th. To the ninth direct int. he answers: I know nothing further.

1st. To the first cross-int. he answers: In 1848 I was 31 years old.

2d. To the second cross-int. he answers: I have known all the parties so long that I do not know when my acquaintance with them be-

130 gan. I did know them all in 1849 & '50. I was not at that time intimate with any of the parties. I don't know the exact age of any of them. Mr. I. K. Tefft was a bank officer; Henry Tefft was a clerk; William P. Tefft was either a clerk or a merchant; Judge Henry and Charles Tefft were both lawyers. None of the parties ever consulted me about their private affairs.

3d. To the third cross int. he answers: I know nothing about the matters inquired of in this interrogatory, and had nothing to do with the matters referred to.

4th. To the fourth cross-int. he answers: Mr. and Mrs. Tefft lived in said house from the time it was built to their deaths. In my 6th direct interrogatory I have stated all I know about the matters herein referred to.

5th. To the fifth cross int. he answers: I know nothing further than I have already stated of the matters herein referred to.

6th. To the sixth cross-int. he answers: I know nothing of the matters herein referred to than I have already stated.

7th. To the seventh cross-int. he answers: I have carefully con-
131 sidered my answers (which amount to nothing), and I now repeat, all I know about it is given in my 6th direct answer.

8th. To the eighth cross-int. he answers: I don't know whether W. P. Tefft was a clerk or in business in 1849, nor whether he ever failed in business or not.

9th. To the ninth cross-int. he answers: I don't know anything of the matters herein referred to. If I ever knew I have forgotten.

10th. To the tenth cross-int. he answers: I always understood that Mr. and Mrs. I. K. Tefft occupied the house as their own. Since the war I know that Mrs. Tefft has rented out rooms in said house to various parties. I don't know whether Mrs. Walden ever exercised any ownership over said house or not, or whether she ever claimed said house before Mrs. Tefft's death. I know nothing more of this matter.

12th. To the twelfth cross int. he answers: I know nothing of the matters herein referred to.

14th. To the fourteenth cross-int. he answers: I know nothing further.

WILLIAM ROGERS.

132 Answered, subscribed, and sworn to before us, the undersigned commissioners, this 13th day of November, A. D. 1874, at Savannah, Ga.

B. A. DENMARK, *Com'r.* [L. S.]
G. A. HOWELL, *Com'r.* [L. S.]

The testimony of Miss Georgia Thompson.

1st. To the first direct interrogatory the witness answering saith: I reside on Jones street, in Savannah, Georgia, and resided same place in 1848, 1849, and 1850. I know complainant but not defendants.

2d. To the second direct the witness answers: I knew Mr. and Mrs. I. K. Tefft and their two sons, Charles and William, and always understood Judge Henry to be the trustee of Mrs. Tefft and her sons; was not acquainted with Judge Henry.

3d. To the third direct the witness answers: William P. Tefft was married to Miss Sarah Sessions, who is now complainant, the widow of C. C. Walden, and who resides in Savannah, Georgia, southwest corner Jones and Bull street.

133 knowledge I know nothing of the matters referred to in this interrogatory.

5th. To the fifth direct interrogatory the witness answers: I have frequently heard Mrs. Tefft say that the old house was sold for the purpose of erecting the new; that the old house was too small & the Tefft family wanted a larger house for them all to live in. Further than this I know nothing of the matters referred to.

6th. To the sixth direct interrogatory the witness answers: I know nothing of the matters inquired of in this interrogatory, other than what I have stated my answer to fifth interrogatory.

7th. To the seventh direct interrogatory the witness answers: I know nothing of the matters referred to in this interrogatory.

8th. To the eighth direct the witness answers: I have known Mrs. Walden ever since she moved into the house where she now resides as the wife of William P. Tefft; she has resided on southwest corner Jones and Bull streets ever since the Tefft family moved into said new house, except a short period of married life with Mr. Walden; she was the daughter-in-law of Mr. and Mrs. I. K. Tefft; Mrs. Tefft on
134 two occasions during the last month of her life said to me that she was very anxious to have certain papers drawn up which would give Mrs. Walden her rights to said new house and all that she, Mrs. Tefft, had; and that she did not wish Mrs. Walden to be troubled after her death.

9th. To the ninth direct interrogatory the witness answering: I know nothing further of benefit to either party in this case, except what is contained in the letters annexed written by me to complainant.

1st. To the first cross the witness answers: I resided in Savannah during the years mentioned, and in 1848 was in my thirteenth year.

2d. To the second cross the witness answers: My acquaintance with Mr. and Mrs. Tefft and their two sons, William and Charles, commenced, I think, about 1850. I had no special relations with them; I was neighbor to them, not specially intimate; don't know their ages were. Mr. I. K. Tefft was in the State Bank; don't know the occupations of
135 the other parties. None of them ever consulted me about their private affairs or the disposition of their property. I have heard Mrs. Tefft speak of Judge Henry as trustee, but don't know for whom he was trustee.

3d. To the third cross-interrogatory the witness answers: I know nothing of the matters referred to in this interrogatory.

4th. To the fourth cross the witness answers: I know nothing about the building of said house; Mr. and Mrs. Tefft lived there from the time said house was finished until their deaths; after Mr. Tefft's death, however, Mrs. Tefft rented said house for a year, I think, to Dr. Daniels.

5th. To the fifth cross the witness answers: I know nothing about the matters inquired of in this interrogatory.

6th. To the sixth cross the witness answers: I have no knowledge of the matters appertaining to this interrogatory.

7th. So the seventh cross said witness answers: The answers I have given are not impressions but positive knowledge of conversa-
136 tions with Mrs. Tefft as already stated. I have answered nothing about which I received information from Mrs. Walden.

8th. To the eighth cross the witness answers: I know nothing of the business relations of Wm. P. Tefft.

9th. To the ninth cross the witness answers: Mr. and Mrs. William P. Tefft accompanied Mr. and Mrs. I. K. Tefft when the latter moved

4th. To the fourth direct the witness answers: Of my own

to said new house, and lived there till after the birth of their second child, when they moved to corner Lincoln and St. Julian streets. Wm. P. Tefft died at the Indian Spring. I did not know the parties in 1849. After Mr. William P. Tefft's death Mrs. Walden moved back to said new house. She has resided continuously in Savannah since her first husband's death. She was originally from Rhode Island, and has not resided there since her marriage with Mr. Tefft. She has since then considered Savannah her home. She was not with Mr. and Mrs. I. K. Tefft as a guest, but as a daughter, and was so regarded and treated.

10th. To the tenth cross the witness answers: Mr. and Mrs. I. K. Tefft, from the time of their removal into said new house to their death, occupied and treated it as their own in all respects. Mrs. Tefft, during the latter part of and since the war, rented out the house
137 and portions of it to various parties. Mrs. Walden did not before Mrs. Tefft's death treat said house as her own that I am aware of. After Mr. Tefft's death I have frequently heard Mrs. Walden assert her claim and right to said house. My knowledge of such claim has been derived both from Mrs. Walden and Mrs. Tefft. Mrs. Walden did not to my knowledge in any way attempt to induce Mrs. Tefft to give her said house by will.

12th. To the twelfth cross the witness answers: I never heard Mrs. Tefft say that she did not understand Mrs. Walden's claim, nor that she could not see any claim; on the contrary, she told me Mrs. Walden had a right to said property, and that she, Mrs. Tefft, was very anxious to have papers drawn up to establish that right.

14th. To the fourteenth cross the witness answers: I know nothing further that will benefit defendants.

GEORGIA E. THOMPSON.

Answered, sworn to, and subscribed before us, at Savannah, Georgia, this 17th day of November, 1874.

G. A. HOWELL, *Com'r.* [L. S.]
B. A. DENMARK, *Com'r.* [L. S.]

(1.)

138 Copies of letters referred to in the foregoing testimony of Miss Georgia E. Thompson.

(1.)

SAVANNAH, *June 20th*, 1862.

DEAR MRS. SARAH: I now write to you by the request of Mrs. Tefft, who has been quite feeble in health since spring, and her greatest wish and desire is for you to come at once. She says I must tell you "how much she misses you, and nobody can do for her as you can." Let us hear from you as soon as you receive this; either write or telegraph. All join me in love to you.

Yours, truly,

GEORGIA E. THOMPSON.

(2.)

SAVANNAH, *June 26th*, 1872.

DEAR MRS. SARAH: I wrote to you on the 16th, also on the 20th, and, not hearing from you, Mrs. Tefft insists upon my writing to you

again. She is much alarmed about herself and is much worried at not hearing from you by telegram. She says I must tell you to come at once—she needs you to look after her, and that, you know, there is no one but yourself left to do for her. She says also that she wants you to have what is here, and that she will have papers drawn up that will secure to you what is due you.

139 Now, Mrs. Sarah, I have written what Mrs. Tefft wishes. I will add a word myself. I really think Mrs. Tefft very ill, and evidently failing, and hope you will come out, if you can, for you can do more for her than any one, for you understand her thoroughly, and with your cheerful and willing heart will not regret any sacrifice you have to make for a little while. The weather is intensely hot, but the city is very healthy. With kind remembrances, from you friend,

GEORGIA.

(3.)

SAVANNAH, *June 28th*, 1872.

DEAR MRS. SARAH: I wrote to you on the 16th, also on the 20th and 26th. Mrs. Tefft insists upon my writing to you again, and say that she is very much worried about herself and also about not hearing from you. She says I must tell you to come at once; she needs you to look after her; and that you know that there is no one but yourself to do for her. She will as soon as she is able, after you come, have a lawyer draw up papers which will give you the property that will belong to you at her death, so you will not be troubled about it; and she particularly wishes you to come to look after your interest now, as she is getting very feeble both in mind & body; and she furthermore says that she desires you to have all she has besides, and says that she knows nothing but your brother's sickness keeps you. Mrs. Sarah, I have written what Mrs. Tefft wishes; I will add one word myself. I really think Mrs. Tefft very ill & evidently failing, so that I hope you will come if you can. Sav'h is very healthy, so you need not fear to come at this season. All join me in love to you.

Yours, truly,

GEORGIA E. THOMPSON.

140 *Testimony of Dr. R. D. Arnold.*

1st. To the first direct interrogatory the witness answers: I reside in Savannah, Georgia, and resided here during the said years. Know complainant but not defendant.

2d. To the second direct the witness answers: I know all the parties mentioned intimately, but know nothing of any legal relations existing between Judge Henry and the Teffts.

3d. To the third direct the witness answers: William P. Tefft was married to Miss Sarah Sessions, of Rhode Island, who is now the present complainant, Mrs. Walden, residing in Savannah.

4th. To the fourth direct the witness answers: Of my own positive knowledge I know nothing of the matters referred to in this interrogatory.

5th. To the fifth direct the witness answers: Of the matters inquired of in this interrogatory I have no positive knowledge. I do not remember any specific conversations in reference to the uses and purposes for which said house was built, but from general conversations with

141 the Teffts I firmly believe that the proceeds of the sale of said lot

on St. Julian street went towards the erection of said new house; this has always been my understanding. I was very intimate with Mr. Tefft and his family, and his circumstances, and know that he was unable to build said new house without the help of the proceeds of the old lot or other resources outside of his income. The reason for building said new house was that the Tefft's wanted to get into a larger one.

6th. To the sixth direct the witness answers: I know nothing of the matters referred to of my own knowledge, but have always heard and understood from the Tefft's, and have believed, that the life insurance money of Henry Tefft was used for the building of said new house. I have always understood from the same source that said life insurance money was five thousand dollars, but I do not know who were its legal recipients.

7th. To the seventh direct the witness answers: I know nothing personally about the matters herein referred to.

8th. To the eighth direct the witness answers: Somewhere about twenty six or seven years ago I knew Mrs. Walden as then the
142 wife of William P. Tefft; she was then living in Savannah in the house on St. Julian street, belonging to the Tefft family. She is now living in Savannah on corner Jones and Bull streets. I don't remember how long she has lived where she now does. I do not know whether Mr. or Mrs. Tefft ever admitted that Mrs. Walden had a claim or right to said house.

9th. To the ninth direct the witness answers: From my intimate knowledge of Mr. Tefft and his circumstances for years and years, my firm conviction and belief are that Mr. Tefft never could have built said new house without the aid of the proceeds from the sale of the old lot and the said life insurance money. He did not have the means.

1st. To the first cross the witness answers: I was born in 1803, and you may calculate my age for yourself.

2d. To the second cross the witness answers: My acquaintance with all the parties mentioned commenced from about the year 1830. I knew them all in 1848, 1849, & 1850. I had no special relation with any
143 of the parties except those of an intimate social friendship. Not having the family Bible at hand I cannot state the ages of the parties mentioned. Mr. Tefft was a bank-officer, Henry and William were clerks, Charles Tefft and Judge Henry were lawyers. None of them was in the habit of consulting me about their private affairs or the disposition of their property, but I was their family physician.

3d. To the third cross the witness answers: I know nothing of the matters referred to herein, except what I have already stated in my answers to the direct interrogatories.

4th. To the fourth cross the witness answers: Mr. and Mrs. I. K. Tefft lived in said new house from the time it was built till their deaths. I have already stated all I know or can state in reference to the other matters herein referred to.

5th. To the fifth cross the witness answers: I have not stated that William P. Tefft advanced any money to help build said new house. I have stated and state again that I always understood from conversations with the Tefft's that said new house was built with the proceeds of said lot on St. Julian street and the life insurance money of Henry D. Tefft.

144 6th. To the sixth cross. the witness answers: I know nothing personally of the matters herein referred to.

7th. To the seventh cross, the witness answers: My answers, dictated

by my impressions and recollections, are not made up from any conversation with Mrs. Walden, but from life-long acquaintance with the Tefft family.

8th. To the eighth cross, the witness answers: I don't know what business William P. Tefft was engaged in, except a general mercantile business in 1849. I have always understood that he failed in business before his death, the date of which I do not remember. Don't know whether or not he was insolvent in 1850.

9th. To the ninth cross, the witness answers: When I first knew Mrs Walden she lived with her father-in-law, Mr. I. K. Tefft, afterwards she lived with her husband on Lincoln street. The years I do not remember. I don't recollect whether Wm. P. Tefft and his wife accompanied Mr. and Mrs. I. K. Tefft when the latter moved to said new house, nor in what house William P. Tefft died. Mrs. Walden has been, as far as I know, alternately at the North and at the South since her first husband's death.
145 I don't know which she considered her home. She was originally from Rhode Island as I have understood. I don't know in what capacity Mrs. Walden was with Mr. and Mrs. Tefft, and the latter after the former's death; but for nearly two years before Mrs. Tefft's death she had control and care of Mrs. Tefft and the household, and diligently and faithfully attended to them.

10th. To the tenth cross, the witness answers: Mr. and Mrs. Tefft occupied and treated said house as their own from the time they moved there till their death. I believe Mrs. Tefft, during and since the war, rented out parts of said house to various persons. I don't know whether Mrs. Walden ever exercised acts of ownership over said house. I have heard Mrs. Walden repeatedly and repeatedly assert her claim to said house before Mrs. Tefft's death. On the afternoon of the day on which Mrs. Tefft died, I had a special appointment, at the special request of Mrs. Tefft, to go to her house and witness a paper in which she said she would do justice to Mrs. Walden. I don't know what Mrs. Tefft was going to do. I never heard that Mrs. Walden ever attempted to get Mrs. Tefft to give her the house by will.

12th. To the twelfth cross the witness answers: I never heard
146 Mrs. Tefft speak of Mrs. Walden's claim to said house.

14th. To the fourteenth cross the witness answers: I know nothing further of benefit to defendants.

R. D. ARNOLD.

Answered, sworn to, and subscribed before us, at Savannah, Georgia, this 18th day of November, 1874.

G. A. HOWELL, *Com'r.* [L. S.]
B. A. DENMARK, *Com'r.* [L. S.]

The testimony of George Nutall.

1st. To the first direct interrogatory the witness answering saith: I reside in Savannah; resided here in 1848, 49, and 1850, and know complainant.

2d. To the second direct int. he answers: I know all the parties mentioned except Judge Henry. I know nothing of any legal relations between the Teffts and Judge Henry.

3d. To the third direct int. he answers: William P. Tefft was married to Miss Sarah Sessions. She is now Mrs. Walden, and resides in Savannah, corner Jones and Bull st's.

147 4th. To the fourth direct int. he answers: I know nothing of the sale of the lot on St. Julian street, nor of any of the matters inquired of in this interrogatory of my own knowledge.

5th. To the fifth direct int. he answers: Of my own knowledge I know nothing of the matters inquired of in this interrogatory.

6th. To the sixth direct int. he answers: Of my own knowledge I know nothing of the matters inquired of in this int. But I will state that I am a carpenter and frequently did work for Mrs. Tefft on the house corner of Jones and Bull streets; whenever I did any work for her, she would always tell me that "You know a part of this house belongs to Sarah (Mrs. Walden), and you must see her about paying for it; that Sarah must pay one-half of your bill." Mrs. Walden always paid me one-half of my bills for work done on the said house. I have also heard Mrs. Tefft say that her son, Mr. W. P. Tefft, furnished money to build said house and that said house was built for W. P. Tefft and his wife.

7th. To the seventh direct int. he answers: I know nothing of the matters referred to in this interrogatory.

148 8th. To the eighth direct int. he answers: I have known Mrs. Walden ever since she was married to W. P. Tefft. She was then W. P. Tefft's wife, and lived in the house on St. Julian street. I don't know how long Mrs. Walden has lived where she now does. I have already stated what Mrs. Tefft said about Mrs. Walden's interest in said house.

9th. To the ninth direct int. he says: I know nothing further.

1st. To the first cross-int. he answers: In 1848 I was about 15 years old.

2d. To the second cross-int. he answers: I first knew the Teffts when I was 14 or 15 years old. I knew all the Teffts in 1848–'9, and 1850. I had no special relations with them; was not intimate with them; don't know how old the parties ; don't know what business any of the parties were in; they never consulted me about their private affairs or disposition of their property.

3d. To the third cross-int. he answers: I know nothing of the matters asked of in this interrogatory.

149 4th. To the fourth cross int. he answers: Mr. and Mrs. Tefft lived in the house from the time it was built till they died. Know nothing further of the matters asked.

5th. To the fifth cross-int. he answers: What Mrs. Tefft told me about the building of the house I have already stated. She told me this after Mr. Tefft's death, and after the house was built. I know nothing of the other matters asked of.

6th. To the sixth cross-int. he answers: I cannot answer any of these questions. Know nothing of them.

7th. To the seventh cross int. he answers: What I have stated is from conversations with Mrs. Tefft. I have had no conversations with Mrs. Walden about it.

8th. To the eighth cross-int. he answers: I know nothing of W. P. Tefft's business affairs.

9th. To the ninth cross int. he answers: W. P. Tefft and his wife, in 1849, lived in the house on St. Julian street, as near as I can remember. I don't know whether they moved with I. K. Tefft in the new

150 house or not. Don't know when W. P. Tefft died. I don't know whether Mrs. Walden has lived continuously in Savannah or not since her first husband's death. Don't know where she is from. I always thought Mrs. Tefft had Mrs. Walden with her as her daughter and not as a guest.

10th. To the tenth int. he answers: So far as I know Mr. and Mrs. Tefft always occupied and treated the new house as their own. I know

nothing of the renting of the house by Mrs. Tefft or Mrs. Walden. Mrs. Walden always said a portion of the house was hers before Mrs. Tefft's death. I have given the sources of my information of Mrs. Walden's claim. I never knew anything about Mrs. Walden's trying to get Mrs. Tefft to give her the house by will.

12th. To the twelfth cross-int. he answers: I know nothing herein asked except what I have already stated. I never heard Mrs. Tefft say that Mrs. Walden had recently begun to set up a claim to the house.

13th. To the thirteenth X-int. he answers: I was born and raised in Savannah. I am a carpenter and have done work for Mrs. Tefft, and thus learned from her what I have said. Lemaire is a painter. My knowledge of what I have said is derived from conversations with
151 Mrs. Tefft while I was at work in her house.

14th. To the fourteenth cross-int. he answers: I know nothing further.

his
GEORGE + NUTALL.
mark.

Answered, subscribed, and sworn to before us at Savannah, Ga., this 18th day of November, 1874.

B. A. DENMARK, *Com'r.* [L. S.]
G. A. HOWELL, *Com'r.* [L. S.]

The testimony of Mrs. J. M. Cass.

1st. To the first direct interrogatory the witness answers: I reside now in Savannah, Georgia. I know Mrs. Walden, but not Mr. Skinner. In 1848, 1849, and 1850, I resided in Savannah.

2d. To the second interrogatory the witness answers: I became acquainted with Mrs. P. W. Tefft in 1861, and of course knew her.
152 Did not know any of the other parties nor anything as to the legal relations existing between the Tefft's and said Henry.

3d. To the third direct interrogatory the witness answers: I never knew Mrs. Walden's former husband. Became acquainted with her after she married Mr. Walden. I believe Mrs. Walden was the wife of Wm. P. Tefft, but was not present when they were married. Never knew Wm. P. Tefft, and did not know Mrs. Walden till after her marriage with Mr. Walden.

4th. To the fourth direct the witness answers: I know nothing whatever concerning the matters asked about in this interrogatory.

5th. To the fifth direct interrogatory the witness answers: I do not know anything at all concerning the matters asked about in this interrogatory.

6th. To the sixth direct interrogatory the witness answers: I know nothing at all of the things referred to in this interrogatory.

7th. To the seventh direct interrogatory the witness answers:
153 I know nothing of the matters referred to in this interrogatory, nor did I have any conversation with any of the parties referred to about the matters referred to in the interrogatory.

8th. To the eighth direct interrogatory the witness answers: I became acquainted with Mrs. Walden during the latter portion of the war, I think, since which time I have known her. She was living, when I first knew her, with Mrs. Tefft, and was the widow of Mr. Walden I think. She is now living at the house on southwest corner Jones and Bull streets, in Savannah, and has lived there for a good while, the length of time I do not know. I heard Mrs. Tefft say, a few months

before her death, that Mrs. Walden had a claim to said house. She said, "I will not leave my property to any man; men can work; Sarah Walden has a claim on the property, she is entitled to it, I will leave it to her." That she had no right to leave it to any man.

9th. To the ninth direct interrogatory the witness answers: She, Mrs. Tefft, told me three days before her death that she knew she did not have long to live and wished to have her affairs settled, and that she wanted certain papers drawn up for Sarah Walden and signed.

154 1st. To the first cross-interrogatory the witness answers: In 1848 I was twenty-seven (27) years old.

2d. To the second cross the witness answers: I did not know any of the parties mentioned except Mrs. Tefft, and I did not know her till 1861. I knew Mrs. Tefft as a friend, and visited her when she was sick.

3d. To the third cross-interrogatory the witness answers: I have already stated, in answer to the fourth direct interrogatory, that I knew nothing of the matters mentioned in this interrogatory.

4th. To the fourth cross-interrogatory the witness answers: I know nothing of the matters herein mentioned, except that Mrs. Tefft lived in said house, but I don't know how long.

5th. To the fifth cross the witness answers: I know nothing of the matters referred to in this interrogatory.

6th. To the sixth cross the witness answers: I know nothing
155 of the things referred to in this interrogatory.

7th. To the seventh cross the witness answers: The answers I have given are not mere impressions, but derived from positive knowledge, as already stated. I have learned nothing whatever from Mrs. Walden which I have stated in my answers.

8th. To the eighth cross the witness answers: I know nothing of the matters referred to in this interrogatory.

9th. To the ninth cross the witness answers: I do not know whether Mrs. Walden has resided permanently in Savannah since her first husband's death. Do not know where she came from, or whether she considers Rhode Island her home, but know she resides here now. I don't know in what capacity Mrs. Walden remained with Mrs. Tefft. I know nothing of the other matters mentioned in this interrogatory.

10th. To the tenth cross the witness answers: I don't know how Mr. and Mrs. Tefft treated and regarded said house. Mrs. Tefft has rented out rooms in her house to various parties since the war. I do not know whether Mrs. Walden exercised any acts of ownership over the
156 house or not during Mrs. Tefft's life. I never heard of Mrs. Walden claiming or setting up any claim to said house before Mrs. Tefft's death. I don't know whether Mrs. Walden ever tried to persuade Mrs. Tefft to give her said house or leave it to her.

12th. To the twelfth cross the witness answers: I have already recalled specially and stated particularly what Mrs. Taft said to me about Mrs. Walden's claim to said property, and I now affirm what I have stated.

13th. To the thirteenth cross she answers:

14th. To the fourteenth cross the witness answers: I know nothing further.

JOANNE M. CASS.

Answered, sworn to, and subscribed before us, at Savannah, Ga., this 11th day of November, 1874.

G. A. HOWELL, *Com'r.* [L. S.]
B. A. DENMARK, *Com'r.* [L. S.]

Testimony of Mrs. Sarah R. Henry.

Interrogatories propounded to Mrs. Sarah R. Henry, a material witness for the complainant.

1st int'y. Where do you reside? Do you know the parties to
157 the above-stated cause, and where did you reside during the years 1848, 1849 and 1850?

2d int'y. State whether or not you knew in their lifetimes Israel K. Tefft, his wife Penelope W. Tefft, their three sons, Charles E. Tefft, Henry D. Tefft, and William P. Tefft, and Judge Charles S. Henrdrie; and if you did know them, state what were the legal relations that existed between the said Tefft's and said Henry.

3d int'y. State whether or not the said William P. Tefft was ever married; and, if so, who was his wife, and who and where is she now?

4th int'y. State whether or not you knew of the sale of a certain lot of land on St. Julian street, in the city of Savannah, in the year 1849, held by said C. S. Henry and one Stephen C. Greene in trust for Mrs. P. W. Tefft for her life and her three sons; and if you do know of the sale of said property state what was done with the proceeds of said lot; and if you answer that most of the proceeds went into a house then being erected on lot No. 5, Monterey ward, on south-west corner Jones & Bull streets, in said city, state how you know that the proceeds were put into said house, for whose use and benefit were they put
158 into said house, and why did not the whole of said proceeds go into said house?

5th int'y. State whether or not you know anything of the uses, purposes, and intentions for which said house on said lot No. 5, Monterey ward, in said city, was erected; and if you state that you do, state fully and particularly how you so knew of them; who did you hear talk about them; when, where, and at what times did you so hear conversations relating to said house; and state fully all you know concerning the reasons given for building said house, and all you know concerning the funds or monies with which said house was built?

6th int'y. If you say, in answer to the fifth direct interrogatory, that you did know of the funds that went to build said house on corner Jones and Bull streets, in Savannah, state all you know concerning it; and if you say that Wm. P. Tefft and Charles E. Tefft furnished certain money to aid in its erection, state whether or not such sum was attained from the life-insurance policy of Henry D. Tefft, and what was the amount; and if you say that Wm. P. Tefft furnished other money besides his share of the life-insurance policy of his brother Henry, that also went into said house, state what amount that was, and state
159 fully and particularly all conversations had with and statements made by said I. K. Tefft, Penelope W. Tefft, Charles S. Henry, and Charles E., Henry D., and Wm. P. Tefft concerning the uses and purposes for which said house was built, and the sources from which the money was derived that went to build it?

7th int'y. State whether or not you know anything of the statements made by the above named parties concerning the purchase and tenure of the said lot No. 5, Monterey ward; and, if so, state fully what they were, and whether or not it was understood and agreed between all the said parties that the said house and lot was held or intended to be held in trust for Mrs. P. W. Tefft and her children upon similar uses and trusts as had been the old lot on St. Julian street, bought from Elias Fort, and held in trust by Judge Henry and Mr. Green?

8th int'y. If you state that you know Mrs. Sarah S. Walden, complainant in the above stated suit, state how long you have known her; where was she living when you first knew her; whose wife was she then, and where is she now living, and how long has she resided where she now does. If you say that she was the daughter-in-law of I. K. and P. W. Tefft, state whether or not either of the last-named persons ever, to your own knowledge, admitted any right or title of the said
160 complainant in said house and lot corner Jones and Bull streets; and, if so, what did they say? State fully, minutely and particularly.

9th int'y. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

B. H. HILL & SON,
HENRY B. TOMPKINS,
Sol's for Complainant.

SAV'H, GA., 21*st Sept'r*, 1874.

Objection to complainant's interrogatories.

1st. The defendant, Darius S. Skinner, objects to the whole and every part of the said interrogatories as irrelevant and illegal except the 1st and 3rd.

2d. He objects more particularly to the 2nd clause of the 2d interrogatory on the ground that "legal relations" cannot be proved by parol.

3d. He objects specially also to so much of the 5th interrogatory as calls for hearsay testimony.

161 4th. He objects specially to so much of the 6th interrogatory as calls for parol proof of the contents of any policy of insurance, and also to so much as calls for hearsay testimony.

5th. He objects also specially to so much of the 7th interrogatory as calls for parol proof of the tenure of real property, and to the second clause, because the matter inquired of cannot be proved by parol.

Cross-interrogatories.

1st. If you say in answer to the 2d direct interrogatory that you knew the persons therein mentioned, state when your acquaintance with each of them began, which of them did you know in 1848, 1849, and in 1859? Had you any special relations with either of them? And if so, with which, and what were those relations? Give some idea of the degree of intimacy existing in those years between you and either of those persons; what was the age of each of those persons at that time, as nearly as you are able to state? In what occupation was each of them engaged; was either of them, at that or any other time, ever in the habit of consulting you about his or her private affairs, or the disposition of his or her property? If you say you know of any "legal
162 relations" then existing between Judge Henry and the Tefts, who told you about such relations?

2d. If, in answer to the fourth direct interrogatory, you say you know anything about a sale of the lot of land therein mentioned, how do you know that it was held in trust by any one for any one? Who told you so? To whom was it sold? And for how much? Was it sold for money or for property taken in exchange? Had you anything to do

with the transactions, or with the money or property taken in exchange? And, if so, what had you to do with it? If you say you had nothing to do with it, and yet undertake to say what was done with it, who told you about it?

3d. If, in answer to the 5th direct interrogatory, you say that you know anything about the building of a house on lot number 5, Monterey ward, state whether you had anything to do with the building of said house, or with the paying for it. If not, who told you about it? Did your informant tell you exactly where the money was obtained to pay for the house? If so, state the various sources from which it was said the money was obtained. Did not Mr. and Mrs. I. K. Tefft live in the house after it was built? How long did they live there?

163 4th. If you say, in answer to the 6th direct interrogatory, that William P. Tefft advanced any money to build said house, were you present when he advanced it? To whom was it paid? How much was it? If you were not present, who told you about it, and at what time were you told? Was it before or after the house was built, or while they were building it? How do you know that it was obtained upon a policy of insurance on the life of Henry Tefft?

5th. If, in answer to the 7th direct interrogatory, you undertake to speak of any such understanding or agreement as is therein referred to, do you mean to say that you know of any contract or bargain on that subject? If so, between whom was it made, and when and where? Were you present; if so, at whose request? If not, who told you about it? Were you present when the lot was bought, or when any deed for it was signed?

6th. Consider carefully your answer to all the direct interrogatories, and state whether the impressions you have with regard to any of the matters inquired of are not merely impressions rather than positive knowledge, and derived rather from conversations with Mrs. Walden than from any personal acquaintance with the matters she has mentioned to you?

164 7th. If you say you knew William P. Tefft in 1849, state what business he was engaged in at that time, and to the time of his death. Did he not fail in his business in that year, or between that year and the time of his death, and become wholly insolvent? Was he not insolvent in 1850'1?

8th. If you say you knew Mrs. Walden in 1849, and that she was then the wife of William P. Tefft, in what house were they living? When Mr. I. K. Tefft moved into the new house, did Mr. and Mrs. W. P. Tefft accompany them; if not, why not? If they did, how long did they stay there, and where did they go when they left? In what house did William P. Tefft die? Has Mrs. Walden lived permanently and continually in Savannah since her first husband's death? Was she not originally from Rhode Island, and has she not usually since her first husband's death, except while she was the wife of Mr. Walden, considered that State as her home, and resided there? When she has been with Mr. & Mrs. I. K. Tefft, or with the latter after the former's death, do you not know that she was there as a guest?

9th. Did not Mr. and Mrs. I. K. Tefft, from the moment of their
165 removal into the new house until their death, occupy and treat it as their own in all respects? Do you not know that Mrs. Tefft, since her husband's death, during the war and since, has from time to time rented out either the whole house or parts of it to various persons? Did you ever know Mrs. Walden, during Mrs. Tefft's life, to exercise any acts of ownership over it, by renting it or otherwise? Did you ever

hear before Mrs. Tefft's death that she set up any claim to it? Is not all your information about any such claim derived from the statements of Mrs. Walden herself? Do you not know that Mrs. Walden, for some time before Mrs. Tefft's death, was trying to persuade her to give her the house by will?

10th. If you say you ever heard Mrs. Tefft say anything about any claim of Mrs. Walden's to the house, recall with care what it was she did say. Was it not that Mrs. Walden had recently began to claim some sort of interest in the house, but that she did not understand it and did not see how there could be any such claim?

11th. State all you know that can be of service to the defendant as fully as if thereto specially interrogated.

JACKSON, LAWTON & BASSINGER,
Sol'rs for D. S. Skinner.

SEP. 21ST, 1874.

166 *Testimony of Mrs. Sarah R. Henry.*

1st. To the first direct interrogatory the witness answering saith: My residence is in Savannah, Georgia, and am now visiting my sister in Rhode Island. Savannah, Georgia, was my residence during the years inquired of.

2d. To the second direct interrog tory the witness answering saith: I know all the persons inquired about. My husband, Charles S. Henry, was the legal adviser of the first named persons. Mr. Israel K. Tefft and all his family and their relations were always friendly and confiding.

3d. To the third direct interrogatory the witness answereth and saith: Mr. William P. Tefft was married to Miss Sarah Sessions. She is now the widow of Charles Carroll Walden. She resides in Savannah, Georgia.

4th. To the fourth direct interrogatory the witness answering saith:
167 I did know of the sale of a lot of land on St. Julian street in the city of Savannah, Georgia, during the time I lived there, which was in 1848, 1849, & 1850. It was a lot of land held in trust by C. S. Henry and Stephen C. Green for Mrs. P. W. Tefft for life, and her three sons. The proceeds of said lot was appropriated to the building of the new house for Mrs. Tefft on the corner of Jones and Bull streets, lot No. 5, Monterey ward, on the southwest corner of the lot. The proceeds were for the use of the entire family, to be held in trust as the old house had been. The new house to be built and held for the same purposes as expressed in the original trust deed of the house and lot in Warren ward. The way I know that the proceeds went as I have said was by hearing it so stated by my husband, Judge Henry, and by Mrs. Tefft and her children; all of the proceeds went as I have said into this new house, except that of Mrs. Tefft. Mrs. Tefft withheld her portion of the proceeds on account of Mr. Tefft's objections to having the deed made in her name, as it would be an injustice to himself and their three sons; this last I know only from hearing the statements to that effect of Mr. and Mrs. Tefft and my husband, Judge Henry.

5th. To the fifth direct interrogatory the witness answering saith:
168 All I know is from having heard the frequent conversations on the subject of my husband and Mr. and Mrs. Tefft to the effect that the new house spoken of was built with the proceeds of the sale of the old house, excepting the portion of Mrs. Tefft, is all I know concerning the uses, purposes, and intentions for which said new house

was built, and the reasons given for building it are that the old house was going to ruin, and they wanted a new one.

6th. To the sixth direct interrogatory the witness answering saith: I can only give the conversations and statements of Mr. & Mrs. Tefft and their three sons. That in addition to the proceeds from the sale of the old house, William P. Tefft and Charles E. Tefft furnished, as I understood, the sum of five thousand dollars, which was obtained from the life insurance policy of Henry D. Tefft, which also went into said house. I know of no other money furnished by said William P. Tefft, except as I have stated; those conversations were in my presence.

7th. To the seventh direct interrogatory the witness answering saith: I cannot give any further explanation of the purposes of the trust aforesaid, other than that the said parties fully understood and agreed that the new house was held or intended to be held in trust for Mrs.
169 P. W. Tefft and her children upon similar uses and trusts as the house had been which was purchased from Elias Fort, and held in trust by Judge C. S. Henry and Stephen G. Green.

8th. To the eighth direct interrogatory the witness answering saith: I have known Mrs. Sarah S. Walden, the complainant, ever since she was a child in her teens in Rhode Island. I knew her when she was the wife of W. P. Tefft, son of I. K. and P. W. Tefft, in the city of Savannah, Georgia. She has resided in Savannah ever since she was married to her first husband, Mr. W. P. Tefft, with the exception of one or two years during her married life with her second husband, Charles Carroll Walden. She has resided in Savannah since the death of Mr. Walden, her husband, with her father-in-law and mother-in-law in the house on the corner of Jones and Bull streets, Monterey ward, No. 5, until their death, which is her present home and residence. Mrs. I. K. Tefft frequently expressed a desire, during her absence in Rhode Island attending her sick brother, for her immediate return to her home in Savannah, and take care and look after her concerns at her said home.

9th. To the ninth direct interrogatory the witness answering
170 saith: My answers to the aforegoing interrogatories contain all I know or can recollect concerning the matters inquired of in this interrogatory.

1st. To the first cross-interrogatory the witness, answering, saith: I have been acquainted with all the parties many years previous to the years 1848, 1849 and 1850, no other than social and friendly, as neighbors, with all of them. I cannot state their several ages exactly; the sons were of age, the parents were perhaps towards fifty years of age, as near as I can state. Mr. I. K. Tefft was cashier of the State Bank of Georgia, the two elder sons were engaged in some mercantile business, and the younger was a lawyer. They have not consulted on any occasion with me, but often with my husband. The legal relations between Judge Henry and the Teffts was known to me by the transactions of their business concerns in my presence and from the declaration of the parties to that effect.

2d. To the second cross-interrogatory the witness, answering,
171 saith: I received the information from my husband and the Teffts at the transaction of their business concerning said sale in my presence, and from the declaration of the parties interested; I learned of the trust from the same source. The estate was sold to John Doyle, for how much I cannot say. I had nothing to do with the transaction in any way.

3d. To the third cross-interrogatory the witness, answering, saith: I had nothing to do with the building of said house or the paying for it;

I obtained my information from the sources I have already mentioned, viz, by business transactions relating thereto by the parties interested, and their conversations relating to the same in my presence, between said parties and their attorney, Judge Henry. Mr. and Mrs. I. K. Tefft lived in said house after it was built, and lived in it until their death.

4th. To the fourth cross-interrogatory the witness, answering, saith: All I know is from having heard the frequent conversations on the subject between Mr. and Mrs. Tefft, and Judge Henry, their attorney, to
the effect that the new house spoken of was built with the pro-
172 ceeds of the sale of the old house, excepting the portion of Mrs.
Tefft. I also understood from the statements of Mr. Tefft, Mrs. Tefft and their three sons, that in addition to the proceeds of the sale of the old house, Wm. P. Tefft and Charles E. Tefft furnished the sum of five thousand dollars which was obtained from the life insurance policy of Henry D. Tefft, which also went into the construction of the house on lot No. 5, Monterey ward. I was not present at the payment of any money; my information was derived from the source which I have stated. I cannot say whether before or after the house was built.

5th. To the fifth cross-interrogatory the witness, answering, saith: I cannot give any further explanation of the intentions and purposes of the said trust other than that the parties heretofore referred to fully understood and agreed that the new house was held or intended to be held in trust for Mrs. P. W. Tefft and her children upon similar uses and trusts as the old house had been held, which was purchased from Elias Fort and held in trust by Judge Charles S. Henry and Stephen C. Greene.

6th. To the sixth cross-interrogatory the witness, answering,
173 saith: I think I have given the subject a careful consideration,
and can safely say that I am not aware of any impression derived from conversation with Mrs. Walden or any other person or persons as having any influence on me in regard to the answers and statements contained in the direct examination.

7th. To the seventh cross-interrogatory the witness, answering, saith: That William P. Tefft was in the mercantile business at the time inquired about, and as to the matter of said William P. Tefft's solvency or insolvency, I know nothing about it.

8th. To the eighth cross-interrogatory the witness, answering, saith: They were living in the old house, I think, at that time; they were all living together in one family, and all moved into the new house together, and remained there until the birth of Mrs. W. P. Tefft's second child; they then went to housekeeping by themselves. Wm. P. Tefft died at the Indian Springs. Mrs. Walden has resided in Savannah continually since the death of her first husband, with the exception of her married life with Charles Carroll Walden. She was originally from Rhode
174 Island, but did not consider her home to be in that State, but in
Savannah, Georgia, as she has often told me. While she has been with Mr. & Mrs. I. K. Tefft, or with the latter after the death of the former, she was always loved and treated as a daughter by the family, and not as a guest.

9th. To the ninth cross-interrogatory the witness answering saith: Mr. and Mrs. I. K. Tefft and their daughter-in-law, Mrs. Walden, occupied said house together in common, until the death of Mr. and Mrs. Tefft. Mrs. Tefft acting in concert with her daughter-in-law, Mrs. Walden, have rented out portions of said house; Mrs. Walden transacted all the business, received and paid out all money from rents or otherwise belonging to said estate, and now rents out the same and receives the profits therefrom;

she has ever claimed, both before and since the death of Mrs. Tefft, the same rights which she now claims. My knowledge of what I have stated was derived from the Tefft family, the parties in interest. I never knew or heard anything about Mrs. Walden as trying to persuade Mrs. Tefft to make will and give her the house.

175 10th. To the tenth cross-interrogatory the witness answering saith: I never heard Mrs. Tefft say that Mrs. Walden had recently began to claim some sort of interest in the house, nor that she did not understand any such claim; on the contrary, I have heard Mrs. Tefft say the now in litigation was Mrs. Walden's home, that she wished her to take charge of everything, saying that she was so feeble herself, and had given up everything into Mrs. Walden's possession. I cannot give the exact words of Mrs. Tefft, but they were the same in substance, but I do know that Mr. Tefft said she had no right to give away to any one that which did not belong to her, and admitting that Mrs. Walden had a right and just claim to the house which they both occupied.

11th. To the eleventh cross-interrogatory the witness answering saith: I cannot state anything that can be of service to the defendant; I do not know him; I never saw him to my knowledge.

SARAH R. HENRY.

Subscribed and sworn to before us this 19th day of October, A. D. 1874.

WILLIAM CARDER,
FRANCIS A. DANIELS,
Commissioners.

176 *Testimony of Joseph Johnson, esq.*

Interrogatories propounded to Joseph Johnson, a material witness for complainant.

1st int'y. Where do you reside; do you you know the parties to the above-stated cause, and where did you reside during the years 1848, 1849, and 1850?

2nd int'y. State whether or not you knew, in their lifetimes, Israel K. Tefft, his wife, Penelope W. Tefft, their three sons, Charles E. Tefft, Henry D. Tefft, and William P. Tefft, and Judge Charles S. Henry; and if you did know them, state what were the legal relations that existed between the said Teffts and said Henry.

3d int'y. State whether or not the said William P. Tefft was ever married; and, if so, who was his wife, and who and where is she now?

4 int'y. State whether or not you knew of the sale of a certain lot of land on St. Julian street, in the city of Savannah, in the year 1849, held by said C. S. Henry and one Greene, in trust for Mrs. P. W.

177 Tefft, for her life, and her three sons, and if you do know of the sale of said property, state what was done with the proceeds of said lot; and, if you answer that most of the proceeds went into a house then being erected on lot No. 5, Monterey ward, on S.W. corner of Jones and Bull streets, in said city, state how you know that the proceeds were put into said house, for whose use and benefit were they put into said house, and why did not the whole of said proceeds go into said house?

5th int'y. State whether or not you knew anything of the uses, purposes, and intentions for which said house on said lot No. 5, Monterey ward, in said city, was erected; and if you state that you do, state fully and particularly how you so knew of them, who did you hear talk about

them, when, where, and at what times did you so hear conversations relating to said house; and state fully all you know concerning the reasons given for building said house and all you know concerning the funds or monies with which said house was built.

6th int'y. If you say in answer to the fifth direct int'y. that you did know of the funds that went to build said house on corner Jones and Bull streets, in Savannah, state all you know concerning it, and
178 if you say that William P. Tefft and Charles E. Tefft furnished certain money to aid in its erection, state whether or not such sum was obtained from the life insurance policy of Henry D. Tefft, and what was the amount; and if you say that Wm. P. Tefft furnished other money besides his share of the life insurance policy of his brother Henry D., that also went into said house, state what amount that was; and state fully and particularly all conversations had with, and statements made by, said I. K. Tefft, Penelope W. Tefft, Charles S. Henry, and Charles E., Henry D., and Wm. P. Tefft concerning the uses and purposes for which said house was built, and the source from which the money was derived that went to build it.

7th int'y. State whether or not you know anything of the statements made by the above-named parties concerning the purchase and tenure of the said lot No. 5, Monterey ward; and if so, state fully what they were; and whether or not it was understood and agreed between all the said parties that the said lot was held, or intended to be held, in trust for Mrs. P. W. Tefft and her children upon similar uses and trusts as had been the old lot on St. Julian street, bought from Elias Fort, and held in trust by Judge Henry and Mr. Greene.

179 8th int'y. If you state that you know Mrs. Sarah S. Walden, complainant in the above-stated suit, state how long you have known her. Where was she living when you first knew her; whose wife was she then, and where is she now living, and how long has she resided where she now does? If you say that she was the daughter-in-law of I. K. and P. W. Tefft, state whether or not either of the last-named persons ever, to your own knowledge, admitted any right or title of the said complainant in said house and lot corner Jones and Bull streets; and if so, what did they say? State fully, minutely, and particularly.

9th int'y. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

B. H. HILL & SON,
HENRY B. TOMPKINS,
Sol'rs for Compl't.

180 *Objections to complainant's interrogatories.*

1. The defendant, Darius S. Skinner, objects to the whole and every part of the said interrogatories as irrelevant and illegal, except the first and third.

2. He objects more particularly to the 2nd clause of the 2nd interrogatory on the ground that "legal relations" cannot be proved by parol.

3. He objects specially also to so much of the 5th interrogatory as calls for hearsay testimony.

4. He objects specially to so much of the 6th interrogatory as calls for parol proof of the contents of any policy of insurance, and also to so much as calls for hearsay testimony.

5. He objects specially also to so much of the 7th interrogatory as calls for parol proof of the tenure of real property, and to second clause because the matter inquired of cannot be proved by parol.

Cross-interrogatories.

181 1st. If you say you resided in Savannah during the years 1848, 1849, and 1850, state what your age was in the year 1848.

2. If you say, in answer to the second direct interrogatory, that you knew the persons therein mentioned, state when your acquaintance with each of them began. Which of them did you know in 1848, 1849, & 1850? Had you any special relations with either of them; and if so, with which; and what were those relations? Give some idea of the degree of intimacy existing in those years between you and either of those persons. What was the age of each of those persons at that time, as nearly as you are able to state? In what occupation was each of them engaged? Was either of them, at that time or any other time, ever in the habit of consulting you about his or her private affairs, or the disposition of his or her property? If you say you know of any "legal relations" then existing between Judge Henry and the Tefts, who told you about such relations?

3. If in answer to the fourth direct interrogatory you say you know anything about a sale of the lot of land therein mentioned, how do you know that it was held in trust by any one for any one?

182 Who told you so? To whom was it sold, and for how much? Was it sold for money, or property taken in exchange? Had you anything to do with the transaction, or with the money or property taken in exchange; and if so, what had you to do with it? If you say you had nothing to do with it, and yet undertake to say what was done with it, who told you about it?

4. If, in answer to the fifth direct interrogatory, you say that you know anything against the building of a house on lot number 5, Monterey ward, state whether you had anything to do with the building of said house, or with the paying for it. If not, who told you about it? Did your informant tell you exactly where the money was obtained to pay for the house? If so, state the various sources from which it was said the money was obtained. Did not Mr. and Mrs. I. K. Tefft live in the house after it was built? How long did they live there?

5. If you say, in answer to the 6th direct interrogatory, that William P. Tefft advanced any money to build said house, were you present when he advanced it? To whom was it paid? How much was it? If you were not present, who told you about it, and at what time

183 were you told? Was it before or after the house was built, or while they were building it? How do you know that it was obtained upon a policy of insurance on the life of Henry Tefft?

6th. If, in answer to the 7th direct interrogatory, you undertake to speak of any such understanding or agreement as is therein referred to, do you mean to say that you know of any contract or bargain on that subject? If so, between whom was it made, and when and where? Were you present? If so, at whose request? If not, who told you about it? Were you present when the lot was bought, or when any deed for it was signed?

7th. Consider carefully your answers to all the direct interrogatories, and state whether the impressions you have with regard to any of the matters inquired of are not merely impressions rather than positive knowledge, and derived rather from conversations with Mrs. Walden than

from any personal acquaintance with the matter she has mentioned to you?

8th. If you say you knew William P. Tefft in 1849, state what business he was engaged in at that time, and to the time of his death.

184 Did he not fail in his business in that year, or between that year and the time of his death, and become wholly insolvent? Was he insolvent in 1850?

9th. If you say you knew Mrs. Walden in 1849, and that she was then the wife of William P. Tefft, in what house were they living? When Mr. I. K. Tefft moved into the new house, did not Mr. & Mrs. W. P. Tefft accompany them? If not, why not? If they did, how long did they stay there, and where did they go when they left? In what house did William P. Tefft die? Has Mrs. Walden lived permanently and continuously in Savannah since her first husband's death? Was she not originally from Rhode Island? and has she not usually since her first husband's death, except while she was the wife of Mr. Walden, considered that State as her home, and resided there? When she has been with Mr. and Mrs. I. K. Tefft, or with the latter after the death of the former, do you not know that she was there as a guest?

10th. Did not Mr. and Mrs. I. K. Tefft, from the moment of their removal into the new house until their death, occupy and treat it as their own in all respects? Do you not know that Mrs. Tefft, since her husband's death, during the war and since, has, from time to time,

185 rented out either the whole house or parts of it to various persons? Did you ever know Mrs. Walden, during Mr. Tefft's life, to exercise any acts of ownership over it by renting it or otherwise? Did you ever hear, before Mrs. Tefft's death, that she set up any claim to it? Is not all your information about any such claim derived from the statements of Mrs. Walden herself? Do you not know that Mrs. Walden, for some time before Mrs. Tefft's death, was trying to persuade her to give her the house by will?

11th. If you say you ever heard Mrs. Tefft say anything about any claim of Mrs. Walden's to the house, recall with care what it was she did say? Was it not that Mrs. Walden had recently began to claim some sort of interest in the house, but that she did not understond it, and did not see how their could be any such claim?

12th. State all you know that can be of service to the defendant as fully as if thereto specially interrogated.

Testimony of Joseph Johnson.

1st. To the first direct interrogatory the witness answering

186 says: Resides in Charleston, South Carolina; knows the plaintiff, Mrs. Sarah S. Walden, but does not know the defendants; and witness resided, during the years 1848, 1849, and a portion 1850, in the city of Charleston, and thinks that he left Charleston for California in the fall of 1850, and remained about two years, when he returned to and took up his residence in Charleston.

2. To the second direct interrogatory witness says: That he knew Israel K. Tefft and his wife, but did not know her Christian name, and also knew Charles E. Tefft, but did not know the other two named personally, but knew that Charles E. Tefft had brothers named Henry and William; and witness has met Judge Charles S. Henry at Mr. Israel K. Tefft's house, in Savanah; does not know of any legal relations between said Teffts & said Henry, having only met him socially at the house of Mr. Tefft.

3. To the third direct interrogatory the witness answers: Does not know whether William P. Tefft was married as he did not know him personally, but met at Mr. Israel K. Tefft's house a lady who was represented or introduced to him as Mrs. William P. Tefft, and this lady wit-
187 ness has understood was married to a Mr. Walden and is the plaintiff in this case. Witness has never met her since her marriage, but has corresponded with her and has no doubt that the plaintiff, Mrs. Sarah S. Walden, is the same person formerly introduced to witness as Mrs. William P. Tefft.

4. To the fourth direct interrogatory witness says: That he does not recollect the name of the streets; witness remembers that about 1849 he was in the house then occupied by old Mr. Tefft and his family, which then consisted, as well as witness remembers, of old Mr. Tefft and his wife, Charles E. Tefft, and Mrs. Sarah S. Tefft, now Mrs. Walden, and was informed by Mr. Israel K. Tefft that the house belonged to his wife and their children. That the house was to be sold and other property purchased with the proceeds. Witness also knows that the family removed from the old house to a new one, which was being built when he first saw it, and witness visited the family in the new house; witness was informed that the old house had been sold and that the new house had been substituted for it, and it belonged to the family in the same manner the old house had been held. His information was derived from old Mr. Tefft and from conversations generally with the family. Does not know what portions of the proceeds of the old house went into the new, but was informed and understood that the new house
188 cost much more than the old. The new house was a much better and finer one than the old, and old Mr. Tefft had frequently told witness that he had nothing beyond his salary as a bank officer.

5. To the fifth direct interrogatory witness says: That the only portion of this interrogatory which is not answered to the extent of his knowledge in the answer to the fourth interrogatory is, that Charles E. Tefft has, in conversation with the witness, spoke of the new house as a home for the family and expressed to witness a share and share alike interest with Mrs. Walden in the property, and witness has always understood that the new house cost much more than the proceeds of the old.

6. To the sixth direct interrogatory witness says: That as far as the application of the proceeds of the old house to the building of the new house is concerned he has stated as fully as possible all that he knows in his answers to the foregoing interrogatories. That as to the life insurance policy referred to in this interrogatory witness only can say that he understood from the conversations of old Mr. Tefft and his son Charles that there was a life insurance policy existing on the life of Henry D. Tefft and they were expecting to realize it, and proposed
189 using the funds to be collected from it to the completion of the house, and that without it they could not complete the house, and that it would have been stopped in the building. That it was a necessity to use this money, for without the aid of the money to be received from this life insurance it would have been impossible to have completed the building of the house. Witness does not know what was the amount of the life insurance, nor where or in what company it was affected, nor whether it was collected or not. He knows that the new house was completed and finished and that the family moved into and lived in it, and that is all he knows about it. Witness does not know of any funds furnished by William P. Tefft or other members of the family.

7. To the seventh direct interrogatory witness says: That he under-

stood from conversations with the family that the new house and lot was bought and substituted for the old house, and was held under the same tenure, only the new house was a more costly and larger one. This fact was impressed on the mind of the witness from the circumstances that he came home and effected a change of investment in the trust estate of his mother, which change was suggested by the change made in the case of the Tefft's estate.

190 8. To the eighth direct interrogatory witness says: That he has known Mrs. Walden in the manner above stated from about 1849. She was living at that time with her father-in-law, Mr. I. K. Tefft; she was then either the wife or widow of William P. Tefft; to the best of witness' knowledge she is now living in Savannah, as the last letter he received from her was dated from that place. Does not know how long she has lived there, but always supposed she resided there since he first knew her. He knows nothing about the streets, but old Mr. Tefft always spoke of Sallie not only having a home but also an interest in the house in which they were living, and they were then living in the new house which witness has above referred to.

9. To the ninth direct interrogatory witness says: That he knows nothing further, except that the family of old Mr. I. K. Tefft always seemed to live in the most intimate, affectionate, and confidential relations with each other.

191 1. To the first cross-interrogatory the witness says: That he never resided in Savannah, but has visited there; has already given his age.

2. To the second cross-interrogatory witness says: He has fully answered this interrogatory in his answer to the second direct interrogatory. His acquaintance with Mr. I. K. Tefft and his wife, his son Charles, and Mrs. W. P. Tefft began he thinks about 1849. His relations with the family was socially intimate, but more particularly with Charles, who was near my own age. Does not know the ages of the members of the family of Teffts; thinks that old Mr. and Mrs. Tefft were about sixty-five years and Charles about his own age; Mrs. Walden, then Mrs. William P. Tefft, was older. Old Mr. Tefft was a bank officer, Charles was a young lawyer, and the other sons he did not know; none of them was ever in the habit of consulting witness as to their private affairs; all he heard was simply said in a confidential and friendly conversation. Old Mr. Tefft was a friend of witness' father, and he, witness, and Charles were very friendly and intimate; knew of no legal relations between Judge Henry and the Teffts.

192 3. To the third cross-interrogatory witness says: He has already answered all he knew or heard about the transactions referred to, and from whom he heard what he has stated.

4. To the fourth cross-interrogatory witness says: He has already stated all that he knows about it. He knows that old Mr. Tefft and his wife and the family did reside in the new house after it was built and completed and supposes that the old gentleman and his wife occupied it until their death.

5. To the fifth cross-interrogatory witness says: He never knew William P. Tefft in his life, or of any money which he may have advanced. He has answered already all that he knows about the policy of insurance on the life of Henry Tefft.

6. To the sixth cross-interrogatory witness says: He knows of no contract or bargain. Had no knowledge of the purchase of the land beyond what he has already stated in his answers to the direct interrogatories.

193 7. To the seventh cross-interrogatory witness says: That he has carefully considered his answers to all the interrogatories. The testimony he has given has been derived from conversations mostly with Mr. Tefft and his son Charles.

8. To the eighth cross-interrogatory witness says: He never knew William P. Tefft or anything about him or his business.

9. To the ninth cross-interrogatory witness says: Mrs. William P. Tefft was living in the old house with her father-in-law in 1849; does not know whether she then was the wife or widow of William P. Tefft. When Mr. Tefft removed to the new house witness knows complainant accompanied them. Does not know anything of William P. Tefft. Does not know if Mrs. William P. Tefft ever left the house. Don't know where William P. Tefft died. Does not know whether Mrs. Walden lived continuously with old Mr. Tefft; knows that she lived with Mr. Tefft in the new house for over two years as a member of the family; knows nothing of her movements after that time. Has always understood that she was from Rhode Island. Does not know what she considered her home after she became Mrs. Walden, but does know
194 that while he knew her as Mrs. Tefft she considered Savannah as her home; always regarded her then and while he visited the house as one of the family.

10. To the tenth cross interrogatory witness says: That all he knows about this interrogatory is what he has already stated as to the conversations and the parties; knows nothing about what has transpired in the family since the death of old Mr. Tefft; has not seen Mrs. Tefft or Mrs. Walden either during the war or since.

11. To the eleventh cross interrogatory witness says: Never heard Mrs. Tefft speak of the house at all.

12. To the twelfth cross interrogatory witness says: He knows nothing further.

JOSEPH JOHNSON.

Sworn to and subscribed in our presence this 12th day of October, A. D. 1874.

JOS. W. BARNWELL. [L. S.]
R. S. DURYEA. [L. S.]
J. BARRETT COHEN. [L. S.]

195 *Testimony of Sarah S. Walden (additional).*

Additional interrogatories propounded to Sarah S. Walden, a material witness for complainant.

1. Have you or not in your possession the original letter from I. K. Tefft to his son Wm. P. Tefft, which you refer to in your bill, and a copy of which, you say, is annexed as an exhibit to your bill? If you say you have that original, produce it, and annex it to your answer, showing, if you can, in whose handwriting it is, and whether the signature is the genuine signature of I. K. Tefft. If you cannot produce that original, state where is it, if in existence. If not in existence, how do you know that fact? If you say it is in existence, but is mislaid or lost, or cannot be found, state how you know it. State all you know about the loss or mislaying or non-existence or whereabouts of said original letter.

2. Have you any copy of that original letter in your possession? If so, state how you know it to be a copy, and whether it is a correct copy. Answer fully, and annex the copy (if you have one) to your answer.

196 3. Have you in your possession any receipts for taxes paid by you on lot number Monterey ward, corner Jones and Bull

streets? If you have, please prove the same, and annex them to your answer.

4. Have you any receipts for repairs paid for by you upon said property, or any receipts for money expended by you upon said property or connected with same? If so, prove them, and annex to your answer.

5. Look upon the annexed paper, marked Exhibit A, and state in whose handwriting the same is. Is the signature known to you; if so, whose is it? If you say the signature is that of Mrs. Penelope W. Tefft, state whether your knowledge of that signature is derived simply from comparison by you of said signature with others of Mrs. Tefft; if not so derived, state particularly the sources of your knowledge.

6. If you have, in addition to the above, any other documents or papers material to your case, and which you omitted by mistake to prove and annex to your answers when your testimony was formerly taken, please prove the same now, if you can, and annex to your answer.

B. H. HILL & SON,
R. R. RICHARDS,
Sol'rs for Comp'lt.

197 EXHIBIT A.

This is to certify that my daughter, Mrs. Sarah S. Walden, since July, 1862, has paid her proportion of taxes and expenses of all kinds upon this property, at the corner of Jones and Bull streets. Savannah, 20th July, 1872.

PENELOPE W. TEFFT.

Cross-interrogatories.

1. If you say you have not the original letter of I. K. Tefft referred to, but only a copy, state by whom and when that copy was made.

2. Is not the paper marked A, attached to the direct interrogatories, in your handwriting? If you say Mrs. Tefft signed that paper, under what circumstances did she sign it? Was it not at your own solicitation? Was it not in fact signed after the 28th September, A. D. 1872?

3. The defendant objects to any testimony in answer to the 6th direct interrogatory, and to any testimony with regard to any other documents or any other subject whatever than those mentioned in the peti-
198 tion for re-examination.

JACKSON, LAWTON & BASSINGER,
Sol'rs for Def't Skinner.

Testimony of Mrs. Sarah S. Walden (additional).

1. To the first direct interrogatory she answers: To the best of my knowledge and belief the original letter mentioned has been lost or destroyed. After my husband sent it to his brother Charles, to Boston, which he did according to his father's request, contained in the letter, it never came back to my husband's hands, but remained with his brother until his death, which occurred at Savannah, June 12th, 1853. After his death all the letters in his possession (including, it is believed, the one referred to) was burned by my father Tefft. Charles had quite a correspondence and it was all destroyed. My father Tefft took charge of the effects of Charles after Charles' death. After my father Tefft's death my mother Tefft took charge of his papers, and I know that the letter

referred to was not in his possession or found by her among my father Tefft's letters, for I had access during my mother Tefft's life to such papers as were in her possession or under her control, and had said letter been among them I would have seen it. The said letter is not
199 in existence, to the best of my knowledge and belief, and what I already stated shows how it was destroyed by my father Tefft. The signature to the original, which was destroyed as stated, was the genuine signature of my father, I. K. Tefft. I saw, read, and copied said original letter, and it was in the handwriting of I. K. Tefft.

2. To the second direct interrogatory she answers: I have a copy of said original letter in my possession; I know it to be a correct copy, for it was made by myself, in my husband's presence, at the time he received the original, and by his direction, before sending it to his brother Charles to Boston. After copying said letter my husband and I compared the copy with the original and found it correct. I annex said copy, marked Exhibit A, to my answers.

3. To the third direct interrogatory she answers: I have in my possession all the receipts for money which I have paid for taxes, ground rents, &c., on said property since July, 1872, to the 16th day of June, 1874, when Mr. Neufville was appointed receiver, said receipts are hereunto annexed marked Exhibits B. All the sums of money mentioned
200 in said receipts I paid from my own money, Mrs. P. W. Tefft never returning the same to me.

4. To the fourth direct interrogatory she answers: Yes; the receipts hereunto annexed marked Exhibits C were given for repairs and money laid out to keep the house at the corner of Jones and Bull streets, number 5, Monterey ward, in order, which money, and much more for which I have no receipts, I paid out as aforesaid, Mrs. Tefft never returning me one cent of the same in any way.

5. To the fifth direct interrogatory she answers: The paper referred to marked Exhibit A is in my handwriting; the signature is known to me; it is Mrs. P. W. Tefft's. On my return from the North, July 9th, 1872, I found her in a deplorable condition and dying state. As soon as she was able from this illness, at her own request, in the presence of a third party, she said to me, my hand trembles so I am unable to write; write this for me and I will sign it, and I wish you to keep this to show that you have always shared in all the expenses. The words used throughout the said paper are precisely the ones she used to me; what she caused me to write was nothing more than what was the
201 truth. I had borne my proportion of the expenses of the property, and the said paper is the said annexed paper, is the original one, so caused to be written by her.

6. To the sixth direct interrogatory she answers: I annex hereto, marked Exhibit D, the paper containing the expenses of building the house now in litigation. This paper is in my father Tefft's handwriting and was given to me by him years ago.

1. To the first cross she answers: I have not the original letter of I. K. Tefft referred to. The copy, as already stated, was made by me a few days after it was received by my husband.

2. To the second cross she answers: The said paper marked Exhibit A is my handwriting; Mrs. Tefft signed that paper under the circumstances detailed in my answers to the direct interrogatories; it was not at my own solicitation and was not in fact signed after Sept. 28th, 1872.

SARAH S. WALDEN.

202 EXHIBIT A.

SAVANNAH, GEO., *Sept. 6th*, 1849.

MY DEAR SON: This morning's mail brought me your favor of the 28th of August.

As regards this business arrangement with Capt. Brooks I do not altogether like. If you take my advice you will never enter again into any business relations with any parties, but commence a commission business on your account; it will need no capital. The life insurance of your brother Henry, by law, goes to you and Charley. The lodge of course pay his funeral expenses, as he was an "Odd Fellow." The money he took North to defray his travelling expenses through the summer will pay his indebtedness to A. Low and Co., which I understand is about four hundred dollars.

When I commenced building on the commons I supposed the proceeds from the old house and the bank stock given me by Mr. Wilkins would pay for the new one, but I find changing my plan of house from a two and basement story to a three-story and basement, changes my figures too. Instead of its costing me five thousand it will come nearer eight thousand. The paving stones I find much more expensive then I had any idea of. Your brother Henry promised to purchase the *the*
203 marble mantels for the house; the memorandum you found in his pocketbook, with dimensions, is the one I gave him when he left home; see Charles Congdon when you go to New York and ask him where would be the best place to purchase them. Now, what I desire of you and Charley is, that the money you have received from your brother Henry you will give me to put into our new house; it will be the best investment you both can make. As I told you all when the old house was sold that your interest went into the new house, and this will go in with the same understanding. Write me as soon as possible on this subject; if my request is not complied with, I shall dispose of the property before I will mortgage it to any one, which I should be compelled to do for the want of money to finish it. You ask why your mother has changed her mind and withdrawn her proportion of the proceeds from the sale of the old house. Simply because I am unwilling, and will not give my consent to the titles being made wholly and entirely in her name, after the style of paper that was drawn up when Mary and Monday were purchased. You can readily see the injustice to myself as well as to your family and your brother Charley.

My kindest regards to all the family. I cannot express to you how grateful I feel to Mr. Sessions for his last kind act when your
204 brother Henry died, when the aching hearts were stricken down with grief for the head and ornament of that home, which so few weeks since had passed away. Kiss Willie for me; tell Sarah I am not surprised that she is proud of her boy.

If Charley has left for Boston forward this to him, as I have not time to write again this week. Your mother sends love.

Affectionately, your father,

I. K. TEFFT.

Copy of letter from I. K. Tefft to Wm. P. Tefft.

EXHIBITS B.

$28.80.] SAVANNAH, *Oct. 14th*, 1872.

Received from Mrs. P. W. Tefft twenty-eight and $\frac{80}{100}$ dollars, for two

quarters' ground rent on lot No. 5, Monterey ward. Due July 19th, 1872.

J. R. JOHNSON,
City Treasurer.

(Across the face:) Paid by Mrs. Sarah S. Walden.

$28.80.] SAVANNAH, *Jan'y* 3, 1873.

Received from Mrs. Penelope W. Tefft twenty-eight and $\frac{80}{100}$ dollars, for two quarters' ground rent on lot No. 5, Monterey ward. Due 19th Jan'y, 1873.

JAMES E. COPE,
For City Treasurer.

(Across the face:) Paid by Mrs. Sarah S. Walden.

205 $28.80.] SAVANNAH, *July 10th*, 1873.

Received from Mrs. Penelope W. Tefft twenty-eight and $\frac{80}{100}$ dollars, for 2 quarters' ground rent on lot No. 5, Monterey ward. Due 19th July, 1873.

JAMES E. COPE,
For City Treasurer.

(Across the face:) Paid by Mrs. Sarah S. Walden.

$28.80.] SAVANNAH, *Jan'y 10th*, 1874.

Received from estate I. K. Tefft twenty-eight and $\frac{80}{100}$ dollars for two quarters' ground rent on lot No. 5, Monterey ward. Due Jan'y 19th, 1874.

J. D. DELANNAY,
Ast. Cit. Treas.

(Across the face:) Paid by Mrs. Sarah S. Walden, J. D. D.

$41.25.] SAVANNAH, *Oct. 14th*, 1872.

Received from Mrs. P. W. Tefft forty-one & $\frac{25}{100}$ dollars for real estate taxes for third quarter, ending 30th Sept., 1872.

JAMES E. COPE,
For City Treasurer.

(Across the face:) Paid by Mrs. Sarah S. Walden.

$41.25.] SAVANNAH, *Jan'y 3d*, 1873.

Received from Mrs. Penelope W. Tefft forty-one & $\frac{25}{100}$ dollars for real estate taxes for fourth quarter, ending 31st Dec'r, 1872.

JAMES E. COPE,
For City Treasurer.

(Across the face:) Paid by Mrs. Sarah S. Walden.

206 $41.25.] SAVANNAH, *April 3d*, 1873.

Received from Mrs. P. W. Tefft forty-one and $\frac{25}{100}$ dollars, for real estate taxes for first quarter, ending 31st March, 1873.

JAMES E. COPE,
For City Treasurer.

(Across the face:) Paid by Mrs. Sarah S. Walden.

$41.25.] SAVANNAH, *July 10th*, 1873.

Received from estate I. K. Tefft forty-one & $\frac{25}{100}$ dollars, for real estate taxes for second quarter, ending 30th June, 1873.

JAMES E. COPE,
For City Treasurer.

(Across the face:) Paid by Mrs. Sarah S. Walden.

$80.50.] SAVANNAH, *Jan'y 10th*, 1874.

Received from estate I. K. Tefft eighty-two & $\frac{50}{100}$ dollars, for real estate taxes for third and fourth quarters, ending 31st Dec'r, 1873.

JAMES E. COPE,
For City Treasurer.

(Across the face:) Paid by Mrs. Sarah S. Walden.

No. 201.] SANANNAH, GA., *Oct, 14th*, 1872.

Received from Mrs. P. W. Tefft one hundred and fifteen $\frac{44}{100}$ dollars, for State and county taxes for 1872.
$115.44.

JAS. J. McGOWAN,
T. C. C. C.

Endorsed on back, to wit:
The within am't was paid by Mrs. Sarah S. Walden.

JNO. SHERLOCK.

No. 2149.] SAVANNAH, GA., *Nov. 29th*, 1873.

R'c'd from Mrs. Sarah S. Walden one hundred and $\frac{64}{100}$ dollars, on property of late Mrs. P. W. Tefft, State & county taxes, 1873.
$100.64.

JAS. J. McGOWAN,
T. C. C. C.

207 EXHIBIT C.

SAVANNAH, GA., *May 23d*, 1874.

Mrs. Charles C. Walden to William M. McFall, Dr., practical plumber & gas fitter, No. 46 Whitaker st.

1874.

May 5.	To repairing water-closet at 125 Jones street:	
	" 2 lbs. solder	1 00
	" 1 w. c. spring	75
	" 3 lbs. putty	30
	" time, P. & H	2 05
		$4 10

Paid.

W. M. McFALL,
Per CORNELL, J. C.

Received from Mrs. Sarah S. Walden, for work done in house 125 Jones, 29th, 30th, 31st of Aug., and 1st, 2d, & 3d of September, 1873, repairing window-sash, glasses, cords, shelves in closets, staircase, window-blinds, repairing door-bell, &c., $17.00.

GEORGE × NUTALL.

SEPT. 30, 1873.

Received, Savannah, Sept. 20th, 1873, of Mrs. Walden, $7.35, for plumbing bill rendered for work at house corner Jones & Bull sts.
$7.35.

W. M. McFALL,
Per CORNELL, J. C.

(Across the face:) Duplicate.

208 Received from Mrs. Walden, for repairing steps and outbuilding, $15.00.

GEORGE × NUTALL.

MAR. 1*st*, 1874.

Received from Mrs. Walden, on house 125 Jones st., for 11 window-cords & fastenings, $5.00.

GEORGE × NUTALL.

OCT. 12*th*, 1872.

R'c'd, Savannah, June 12th, 1874, of Mrs. Walden, three $\frac{35}{100}$ dollars, for plumbing work at house cor. Bull and Jones sts., in full to date.
$3.35.

W. M. McFALL,
Per CORNELL, J. C.

SAVANNAH, GA., *August* 1, 1874.

Mrs. Walden, for plumbing at cor. Jones & Bull sts., to William M. McFall, Dr., plumber, &c., &c.

July 9th.	To extending waste-pipes at res.:	
	5 lbs. lead pipe	85
	1 " solder	50
	2½ h'rs time, P. & H	1 50
		$2 85

Paid August 27th, 1874.

W. M. McFALL,
Per J. C. CORNELL.

209 SAVANNAH, GA., *Ap'l* 1, 1875.

Mrs. Walden to William M. McFall, Dr., plumber, &c.

March 4.	To repairing leak in gas-pipes, Bull and Jones streets	1 75
23.	" repairing water-pipes to same:	
	12 ft. 6 in. galv. pipe	5 00
	3 return bends	90
	7 washers	75
	½ day's time, P. & H	3 00
		$11 40

(Across the face:) In fireplace.
Paid.

W. M. McFALL,
Per CORNELL, J. C.

SAVANNAH, GA., 1st *Dec'r*, 1873.

Mrs. C. C. Walden to Cormack Hopkins, Dr., house furnishing, roofing, &c., &c.

1873.

Nov. 22. To repairing roof of house located corner Jones & Bull sts.:

2 days' time of tinner, @ $5.00	10 00
7 lbs. solder, 50	3 50
2 bushels coal, 31=60; 1 sheet tin, 15	75
	$14 25

Received payment 29th Dec'r, 1873.

CORMACK HOPKINS.

210 SAVANNAH, GA., *Nov.* 1, 1874.

Mrs. Walden to William M. McFall, Dr., plumber, &c.

Oct. 7. To repairing gas at Jones & Bull sts.—¼ day's time, P. & H. $1 50

Paid.

W. M. McFALL,
Per CORNELL, J. C.

SAVANNAH, GA., *July* 1, 1875.

Mrs. C. C. Walden to Cormack Hopkins Dr., roofing, &c., &c.

June 22. To repair work done on roof of house 125 Jones:

Time of tinner, 1.25; 2½ lbs. solder, 40=100	2 25
Coal	25
	$2 50

R'c'd payment.

CORMACK HOPKINS,
Per A. F. TURNER.

SAVANNAH, GA., *Aug.* 2, 1875.

Mrs. S. S. Walden to William M. McFall, Dr., plumber, &c.

July 19. To extending water-pipes at house cor. Bull & Jones sts.:

		22 feet galv. pipe	5 50
		2 lbs. lead "	30
211	July	19. To 1 comp. cock	2 25
		4 hooks	40
		1½ lbs. solder	75
		½ day's time, P. & H	3 00
			$12 20

R'c'd pay.

W. M. McFALL.

EXHIBIT D.

Expense of house No. 5, Monterey ward:

Bricks	2,040 67
Mason's work	738 50

Carpenters	2,662 15
Lime	301 75
Stone work	752 93
Plastering	546 71
Tin roofs	297 36
Laying flags	200
Marble mantle & parts	298 91
Iron railing	94 04
Pump	18 00
Lightening rods	34 00
Bells	25 94
Iron work	61 15
Extra labor	50 00
Hogg, for plan	90
Bills paid	8,212 11

212 Unpaid:

Flagstones, 456.30; painting	456 30
P. on lot	241

Estimate of building in my father Tefft's writing.

Answered, sworn to, and subscribed before us, at Savannah, Ga., this sixteenth day of September, A. D. 1875.

G. A. HOWELL, *Com'r.* [L. S.]
B. A. DENMARK, *Com'r.* [L. S.]

Testimony of Monday Habersham.

Interrogatories propounded to Monday Habersham, a material witness for complainant.

1. Where do you reside? What is your age and occupation? And where did you reside, and how were you employed during the years 1849 & 1850?

2. Were you or not ever acquainted with Israel K. Tefft, his wife, Penelope W. Tefft, and their three sons, Henry, Charles, and William, in their lifetimes? And, if you were, state what degree of intimacy existed between you and them, when and where you first became acquainted with them, and how long you knew them.

213 3. Do you or not know the compl'nt, Mrs. Sarah S. Walden, former wife of William P. Tefft? And, if you do, state how long you have known her, whether or not you know where she has resided in Savannah, since you knew her, and what relation she bore to the aforesaid Mr. and Mrs. Tefft and their three sons. And if you state that that you do know the relations that she sustained to the said Teffts, state fully and particularly what those relations were, and what degree of intimacy existed between them.

4. Do you or not know of the said Tefft family ever having lived in a house in Savannah, on St. Julian street? And if you do, state all you know concerning the sale of that house, when it was sold, why it was sold, and what was done with the proceeds of said sale. If you should say that the proceeds were put into a new house on the corner of Jones and Bull streets, in Savannah, state how you know this fact, from whom did you learn it, and what were the reasons given and purposes and

uses for which this investment was made. State whether or not Mr I. K. Tefft, his wife, P. W. Tefft, or Judge Henry ever told you or
214 said in your presence that the new house was built for a home for the family, and that is was to be held on the same uses and trusts, as to Mrs. Tefft and her children, as had been the old house on St. Julian street; if yea, state fully what was said and what was the common understanding in the Tefft family as to how and for whose benefit the new house was built.

5. Do you or not know of any other money having gone into the new house on Jones street besides that derived from the sale of the old house on St. Julian street? If yea, state what money it was, how much of it there was, and from what source it was obtained. And set forth fully any statements made by J. K. Tefft, Penelope W. Tefft, or Judge Henry as to where this money came from and of what aid it was in the building of the house on Jones street.

6. State whether or not you knew Mrs. Tefft after the death of I. K. Tefft and her three sons; and, if yea, state where she lived, what was her condition, who lived with her and took care of her, and whether or not she ever said or admitted any right, title, or interest of Mrs. Sarah S. Walden in the said property at corner of Jones and Bull streets.

215 7. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

B. H. HILL & SON,
HENRY B. TOMPKINS,
Sol'rs for Compl'nt.

Objections to complainant's interrogatories.

The defendant, Darius S. Skinner, objects to so much of the fourth interrogatory as calls for the parol statements of any person whomsoever with reference either to the creation or terms of any trust. He objects also to so much of the fifth direct interrogatory as calls for the parol statements of either of the persons mentioned therein.

Cross interrogatories.

1. If you say that you once belonged to Mr. or Mrs. I. K. Tefft, state whether you ever lived at their house; and, if so, when you
216 stopped living there. Were you not hired out or allowed to hire yourself out? Did you ever live in the house with them after 1850? How long before emancipation did you work out? How long is it since you lived in the house? Have you done so since emancipation? How many times after emancipation did you see Mrs. Tefft?

2. In answering the fourth direct interrogatory the witness *the witness* is required to speak from his own knowledge, and to abstain from retailing what he has heard of only at second hand. Do you know yourself anything about any sale of the House on St. Julian street, or how much it was sold for, or what was done with the money? If you say anything about the matters inquired of at all, how much of what you say do you recollect of your own accord of what you once knew, and how much have you been reminded of Mrs. Walden?

3. If you say in answer to the fifth direct interrogatory that you know that other money went into the new house, besides what the old house sold for, was it not obtained from Mr. Archie Wilkins?

217 Were not Mr. Tefft and Mr. Wilkins very intimate? If you know anything about the matter at all, don't you know that Mr. Tefft got money from Mr. Wilkins to build the new house?

4. Were Mr. and Mrs. Tefft in the habit of consulting you about their affairs? Is not all that you know about this matter what you gathered from the talk in the house, which you happened to hear piecemeal, sometimes one thing, sometimes another?

5. If you were familiar with the affairs of the Tefft family, did you not also know something of William P. Tefft's affairs? What business was he engaged in in 1849 and 1850, and from that time to his death? Did he not fail in his business and become totally insolvent? Did you not know as a fact that he had no money to spare? If you ever heard anything about any money he got from his brother Henry's life-insurance, how much was it? And how did you know anything about it? Did not Mrs. Walden tell you all that you know about it, and has not she told it to you since Mrs. Tefft's death?

6. Is it not true that Mrs. Walden has never lived permanently with Mrs. Tefft, either before or after Mr. Tefft's death, but has been there sometimes on visits of greater or less duration, sometimes longer,

218 sometimes shorter? Don't you know that she was often there when she was not wanted? That it was never agreeable either to Mr. or Mrs. Tefft to have her there, and that they submitted to it only because she was their son's widow? Do you mean to say that Mrs. Walden took care of Mrs. Tefft after the old gentleman's death? Don't you know that she was perfectly well, notwithstanding her age, until within a short time before her death, and needed nobody to take care of her, and that Mrs. Walden, when at the house, was an annoyance to her? What do you think of Mrs. Tefft ever having said that her house belonged to somebody else—to Mrs. Walden, for example? Don't you know that she never said any such thing in her life, and that you never heard her say such a thing? Have you not heard Mrs. Tefft say a great many times, at least since the war, the she intended the house and lot for her nephew, Mr. Skinner? Don't you know that the old gentleman himself wished her to dispose of it in that manner? Did you ever hear from anybody that Mrs. Walden set up any claim to the house until Mrs. Walden herself told you so after Mrs. Tefft's death?

JACKSON, LAWTON & BASSINGER,
Sol'rs for D. S. Skinner.

219 *Testimony of M. J. Habersham.*

1. To the first direct interrogatory the witness, answering, saith I reside in Savannah; am 58 years old; farm and do a commission business. In the years 1849 and '50 I resided in Savannah, in a house owned by I. K. Tefft, situated on corner Popaloa & Harris streets; during those years I was in the employ of Mr. I. K. Tefft, as his slave. I hired my own time of Mr. Tefft, and worked for various parties.

2. To the second direct int. he answers: I knew all the parties referred to. I knew them all well. I became acquainted with all the parties in 1840, or thereabouts, at the time I was purchased by Mr. Tefft as his slave, and knew them till the death of all.

3. To the third direct int. he answers: I know Mrs. Walden; knew her from the time of her marriage with William P. Tefft. Don't remember the exact time of her marriage. Mrs. Walden lived with her

husband, W. P. Tefft, in a house on St. Julian street, till his death. After his death she resided with Mr. and Mrs. I. K. Tefft, and
220 lived with them as the widow of their son, and under their care and protection. For a year or two after she married W. P. Tefft she and her husband lived with Mr. and Mrs. Tefft. After she married Mr. Walden she lived with him at the North till his death, and a short time thereafter she came back and lived with Mrs. P. W. Tefft. I have explained that Mrs. Walden was the wife and afterwards the widow of William P. Tefft, and, so far as I know, she was on intimate terms with the whole family. Mr. Tefft always stated that his house was the home of Mrs. Walden, and she was respected and treated as a member of the family.

4. To the fourth direct int. he answers: I know that the Tefft family lived in a house in Savannah, on St. Julian street, at one time. The said house was sold for the purpose of getting money to help pay for the new house on corner of Jones and Bull streets. Mr. I. K. Tefft told me this repeatedly. Mr. Tefft told me that the proceeds of the sale of the house on St. Julian street was put in the house and lot on corner of Jones and Bull streets. He said the reason of this was that he wanted all the family to have the new house as their home. Mrs. Tefft often said too that this new house and lot was to be the home
221 of the family. I have heard Mrs. Tefft frequently say that this new house and lot were to be held on the same uses and trusts, as to her and her children, as the old house had been held on St. Julian street. The common understanding in the Tefft family was that the new house was built for the benefit of the entire family.

5. To the fifth direct int. he answers: I have heard Mrs. I. K. Tefft say that her son William gave some money to Mr. I. K. Tefft to go into the new building, which money belonged to Mrs. Walden, who was then the wife of William, but I don't know the amount. I never heard Mr. Tefft or Judge Henry say anything about the source of this money, or what use it was in the building of the house.

6. To the sixth direct int. he answers: I knew Mrs. Tefft after the death of her husband and 3 sons. She then lived on the corner of Jones and Bull streets, in Savannah, Georgia. Mrs. Tefft always complained of being poor; that she was not able to pay her water rent, taxes, &c., and have enough of money to live on. Mrs. Walden lived with and took care of Mrs Tefft, with the exception of one summer, when she
222 lived at Montgomery. Mrs. Tefft told me that Mrs. Walden shared the expenses of the house, and living, &c. I never heard Mrs. Tefft say anything about the interest of Mrs. Walden in the house on the corner of Jones & Bull, except what I have stated in my answer to interrogatory 5th. Up to the time of Mr. I. K. Tefft's last illness, I have heard him repeatedly tell Mrs. Walden that their house was her home. He said this to her in his last sickness.

7. To the seventh direct int. he answers: That the life insurance money of Mr. Henry Tefft, whose life was insured, as I have always understood, for the benefit of his two brothers, was also put into the new house on corner of Jones and Bull, as I have frequently heard Mrs. Tefft say. I know nothing further of benefit to either party.

1. To the first cross-int. he answers: I never lived in the house with the family, but was frequently in the house and often took my meals there for several months at a time. I was allowed to hire
223 myself out, as I have already stated; I never lived in the house with the family. I worked out from the time I was bought by Mr. Tefft till emancipation, except now and then when I did work for

him. After emancipation I saw Mrs. Tefft every day and sometimes oftener until within 12 months of her death, when I saw her only a few times.

2. To the second cross-int he answers: I know nothing about the sale of the house, what it brought, what was done with the money, except what I have heard from Mr. and Mrs. Tefft. I remember all I have stated of my own accord, and Mrs. Walden has never reminded me of any of it.

3. To the third cross-int. he answers: I know nothing of any money being obtained from Mr. Archie Wilkins to build this house. Mr. Tefft and Mr. Wilkins were very intimate.

4. To the fourth cross-int. he answers: Mr. and Mrs. Tefft were not in the habit of consulting me about their affairs and never did so, but I was their servant and one whom they trusted, and when I was
224 about them they frequently told me how they were managing and getting along. I know nothing about this except from conversations which took place in the family and in my presence. I did not get it from piecemeal talk in the house.

To the fifth cross-interrogatory the witness answers: Mr. William P. Tefft was at first in business as a clerk for Mr. O'Driscoll, the time I do not remember. Afterwards he was a partner of O'Driscoll's for a short time, when he went into business for himself and failed, and died totally insolvent. I know he had no money to spare. I never heard anything about whether or not he ever got any money at all from his brother's life insurance. Mrs. Walden has not told me anything about any matters concerning this case.

6. To the sixth cross-int. he says: Mrs. Walden, to my own knowledge, has always lived with Mrs. Tefft permanently except as I have already explained in my direct answers, and now and then she would go off on occasional visits. I don't know that Mrs. Walden was often at Mr. and Mrs. Tefft's when she was not wanted. I know she was
225 always welcome, and was treated by them as a member of the family. Mrs. Tefft was well until a short time before her death, except occasional sickness, as all old persons are subject to, and needed some one to look after her when she was unwell. I do not know that Mrs. Walden did not take care of Mrs. Tefft after Mr. Tefft's death; she always seemed to give Mrs. Tefft all the attention she needed when I was about. I don't think Mrs. Walden was ever an annoyance to Mrs. Tefft, but I don't know of any difficulties between them, if any. I never heard Mrs. Tefft say that her house belonged to Mrs. Walden or any one else, but I have often heard her say the house was hers and her sons'. I never heard Mrs. Tefft say at any time that she intended to give the house to her nephew, Mr. Skinner. I don't know anything about Mr. Tefft's intention or will as to how the house should be disposed of except what I have already said he said to Mrs. Walden repeatedly. I don't know that he wanted Mr. Skinner to have it. I never heard from any one that Mrs. Walden set up any claim to the house referred to at any time, but I always understood from Mr. and Mrs. Tefft that that was her (Mrs. Walden's) home.

his
MONDAY J. + HABERSHAM.
mark.

226 Answered, subscribed, and sworn to before us this 23rd day of October, A. D. 1874, at Savannah, Georgia.

B. A. DENMARK, *Com'r.* [L. S.]
G. A. HOWELL, *Com'r.* [L. S.]

Testimony of Mr. W. E. Doane and Mrs. Elizabeth A. Doane.

Interrogatories propounded to Mr. W. E. Doane and Mrs. Elizabeth A. Doane, material witness' for complainant.

1. Do you know the parties to the above stated cause; where do you reside, and in what business are you engaged?

2. Have either of you ever been in the city of Savannah? If yea, state when you were there, how long you remained, with whom you resided, and at what house in said city.

3. State whether or not you ever knew at Savannah, or elsewhere, Mrs. Penelope W. Tefft in her lifetime; and if yea, state how long you knew her and how intimately, and at what time you first became acquainted with her.

4. If you say that you did know Mrs P. W. Tefft, state whether
227 or not she spoke to you or in your presence of the house she lived in on the southwest corner of Jones and Bull streets in the city of Savannah; and if yea, state fully and specifically what she said concerning the title or ownership of said property; and what she said, if anything, concerning the rights of Mrs. Sarah S. Walden to said house and lot.

5. State whether or not Mrs. P. W. Tefft ever spoke of the time and manner of the erection of said house on said lot; and if yea, state all she said upon this subject as to how and by whom the house was built, whose money and aid conduced to its erection, upon what trusts and uses it was held and owned, and what were her own rights and powers in, to, and over said property.

6. Did you or did you not ever hear her, the said Mrs. P. W. Tefft, say anything *a* one Judge Charles S. Henry, dec'd, trustee, and, if yea, what did she say concerning him in connection with the said house on corner of Jones and Bull streets?

7. Did you or did you not ever hear the said Mrs. P. W. Tefft speak of the defendant, D. S. Skinner, or of one Andrew M. Ross; and, if yea, what did she say of them in connection with said property on
228 corner of Jones and Bull streets? Did or did you not ever hear Mrs. Tefft speak of the negroes Jimmie and Serappy, or of one Ann Rose Alexander and her husband; and, if yea, what did she say of each of them, and what were her feelings towards them and the said A. M. Ross?

8. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

B. H. HILL & SON,
HENRY B. TOMPKINS,
Sol'rs for Complainant.

Objections to complainant's interrogatories.

The defendant, Darius S. Skinner, objects to the 4th, 5th, and 7th interrogatories as illegal and irrelevant.

Cross-interrogatories.

229 1. If you say in answer to any of the direct interrogatories that you ever heard Mrs. Tefft make any such statements as ap-

pear to be sug'ested by the direct interrogatories, state whether they were made for the purpose of transacting business, or casually only, and in the course of loose and general conversations. How came any such statements to be made to you or in your presence at all? How much do you know of the private affairs of the Tefft family? What information have you, and whence did you derive it, of the questions involved in this controversy? Have you not conversed with Mrs. Walden on the subject in the course of 2 or 3 months last past? If you ever had any conversations with Mrs. Tefft, or heard any such remarks from her, as you seem to be expected to state, say whether you recollect what was said independently of any efforts of Mrs. Walden to remind you of them. Did you ever attach any importance to them until reminded of them by Mrs. Walden? Is either of you related to Mrs. Walden in any way, and, if so, how? Was not Mrs. Walden present at the conversations with Mrs. Tefft referred to; and was not everything said by Mrs. Tefft really prompted by her? Are you not aware that Mrs.
230 Walden was trying for a long time before Mrs. Tefft's death to get her to give her the house and lot referred to? Do you know Darius S. Skinner? How was he related to Mrs. Tefft? Do you know Mr. and Mrs. Ross, or the negroes Jimmie, Scrappie, and Ann Rose Alexander? Explain how you happened to know about any of the matters inquired of, and give the time, place and circumstances of any conversations you report.

JACKSON, LAWTON & BASSINGER,
Sol'rs for D. S. Skinner.

Testimony of Wm. E. Doane.

1. To the first interrogatory he answers: I am acquainted with Sarah S. Walden, the complainant in this cause. I do not know Darius S. Skinner. I reside in the city of New York, in the State of New York, at No. 130 West 34 street. At the present am engaged in no business.

2. To the second interrogatory he says: I have been in the city of Savannah. I was in said city a portion of the last five winters; my visits were not of an uniform length. From a period beginning about the first of November, in the year A. D. 1872, I was in said city for nearly, if not quite, five consecutive months. I resided at Mrs. Tefft's,
231 on the southwest corner of Jones and Bull streets in said city.

3. To the third interrogatory, he answers: I knew Mrs. P. W. Tefft in said city of Savannah. I was acquainted with her about five winters; I consider that I knew her intimately; I saw her often and a good deal of her; I was a frequent visitor at her house; I am not positive as to the actual or exact time at which I met Mrs. P. W. Tefft, but am under the impression that it was during the winter of A. D. 1868.

4. To the fourth interrogatory he says: She constantly spoke to me and in my presence of the said property on the said corner of Jones and Bull streets, in said city of Savannah. Mrs. P. W. Tefft said that the said house, on said corner of Jones and Bull streets, was built with money which was the proceeds of the sale of a house of her husband and with money contributed by his sons. Mrs. P. W. Tefft said to me that she had invested none of her own money in said property. Mrs. P. W. Tefft frequently remarked in my presence that Mrs. Sarah S. Walden had a claim on said house, but as to the certain or specific amount of said claim I don't remember her ever to have been
232 definite. Mrs. P. W. Tefft said that the said Mrs. Walden's claim grew out of the fact that Mr. Tefft, the former husband of the

said Mrs. Walden, had contributed money toward the construction of said house. I do not remember that Mrs. P. W. Tefft ever referred to the lot on said corner of Jones and Bull streets separately, as a distinct piece of property, but she always referred to the house and lot on said corner as the property which was purchased and built by the joint means of her husband and sons.

5. To the fifth interrogatory he says: Mrs. P. W. Tefft has often remarked in my presence the time when said house was built on said lot, but I cannot now remember the date. I have heard the said Mrs. P. W. Tefft say that so long as she lived she had a home, and a home in said house, and if her sons had lived they would have had control of the property on said corner, but that her husband had put enough money in said property to insure her a home so long as she might live. I may not give the exact words of Mrs. P. W. Tefft, but I state the substance of her language in reference to this matter.

6. To the sixth interrogatory he says: I heard Mrs. Tefft fre-
233 quently refer to Judge Charles S. Henry as one who had charge of the said property on said corner of Jones and Bull streets, and she spoke of Judge Charles S. Henry with respect and praise as to his management of said property on said corner of Jones and Bull streets. Mrs. Tefft said that the said Judge Henry knew and understood all about the said property on said corner.

7. To the seventh interrogatory he says: I have often heard Mrs. P. W. Tefft mention Mr. D. S. Skinner and Mr. Andrew M. Rose. I have heard Mrs. Tefft say that the said D. S. Skinner brought the said Andrew M. Ross to her house on the said corner of Jones and Bull streets, and that the said Skinner and said Ross carried her to the house of the said Ross and got her to sign certain papers for the purpose of giving away the said property on said corner. I have repeatedly heard Mrs. Tefft speak of the negroes, Jimmie, Scrappy, and Ann Rose Alexander and her husband. Mrs. Tefft felt that the said negroes were imposing upon her and getting everything from her that they could. She felt that the said A. M. Ross was on very fine terms with the said Jimmie and Scrappy. She felt that the said Ross was trying, through
234 the said Jimmie and Scrappy, to keep posted as to everything that was going on at the house. She sometimes felt very angry towards the said Ross, and I have heard her say that she would not see him or speak to him if he should call at the house.

8. To the eighth direct interrogatory he says: When I had apartments at Mrs. Tefft's, on said corner of Jones and Bull streets, during the winter of 1872 & '73, I heard Mrs. Sarah S. Walden accuse the said Mrs. Tefft of having burnt and destroyed certain papers belonging to the said Mrs. Walden, and relating to said property on said corner of Jones and Bull streets; I heard Mrs. Tefft acknowledge that she had thrown the said papers in the fire. The deponent answered no further to the direct interrogatories.

1. The statements which I have given in answer to the direct interrogatories, and appearing in the foregoing answers, were made by the said Mrs. Tefft at different times and under different circumstances.
235 Sometimes she would speak of the matters I have stated white with me only. I heard Mrs. Tefft make some of the said statements while talking over her business with Mrs. Sarah S. Walden. I did not regard the conversations out of which these said statements grew as loose and general conversations, but I looked upon the matters as a discussion of and conversations about her family matters, and about the said property on the said corner of Jones and Bull streets.

2. Mrs. Tefft, I presume, saw proper to discuss and talk about the said matters at the times and under the circumstances which I have stated.

3. I think I know a good deal about the private affairs of the Tefft family.

4. The information which I have of the matters involved in this controversy has been herein set forth in the foregoing answers, and was derived from such sources and under such circumstances as have also been fully herein set forth.

236 5. I have not conversed with Mrs. Sarah S. Walden in the course of two or three months past.

6. Everything which I have stated in answer to the annexed cross and direct interrogatories I remember independently of any effort of Mrs. Sarah S. Walden to remind me.

7. I attached importance to the said statements by Mrs. Tefft at the time when I heard them made.

8. I am not in any way related to Mrs. Sarah S. Walden.

9. Mrs. Sarah S. Walden was sometimes and sometimes she was not present when such remarks as I have herein stated were made by Mrs. Tefft and heard by me. When I heard some of the said statements made by Mrs. Tefft, Mrs. Walden was not only not present but not in the city of Savannah.

237 10. I have often heard Mrs. Walden, in speaking with Mrs. Tefft, assert her right and claim to the said property, but never heard Mrs. Walden ask Mrs. Tefft to give her the said property on the said corner of Jones and Bull streets.

11. I do not know Darius S. Skinner.

12. I do not know of my own knowledge the relationship existing between Mrs. Tefft and the said Skinner. I have heard Mrs. Tefft speak of the said Skinner as her nephew.

13. I do not know Mr. & Mrs. Ross. I know the negroes Jimmie, Scrappy, and Ann Rose Alexander.

14. I happen to know of the matters inquired of because for several years I was acquainted with the said Mrs. Tefft. I was a frequent visitor at her house on the said corner of Jones and Bull street, at different times; the exact dates I cannot now remember. I had friends stopping at Mrs. Tefft's on said corner. I would call to see them from time to time and would always call upon Mrs. Tefft when at her house.

238 I would meet Mrs. Tefft in her library, in the hall, and in different apartments of the house. I never talked with Mrs. Tefft nor had any conversation with her of any kind except at the said house on the said corner of Jones and Bull streets, in the said city of Savannah. At one time, beginning in November, 1872, I had apartments in the said house on the said corner for about five consecutive months. I saw Mrs. Tefft constantly; our conversations were frequent and of different lengths. I cannot now recollect the exact day upon which any of the said statements were made by Mrs. Tefft, but each and all of said statements were made in Mrs. Tefft's house on the said corner of Jones and Bull streets, in the said city of Savannah, during the time of our acquaintance, beginning at a time herein stated, and also while I had apartments at said house, the time thereof being herein set forth.

Further the deponent saith not.

WILLIAM E. DOANE.

Subscribed and sworn to before us this 19th day of November, A. D. 1874, the witness having read over the same in our presence before signing the same.

GEORGE T. BETTS,
U. S. Comm'r for So. Dist. N. Y.,
WM. A. SHORTER,
Comm'r named herein,
Commissioners.

239 *Testimony of Mrs. Elizabeth A. Doane.*

1. To the first interrogatory she answers: I know Mrs. Sarah S. Walden; I do not know Darius S. Skinner; I reside in New York City, in the State of New York, at No. 130 West 34th street; am engaged in no business.

2. To the second interrogatory she answers: I have been in the city of Savannah; I was first in said city during A. D. 1870, and was also in said city at different times the two following years; I remember that I was in said city during the first part of A. D. 1873. During A. D. 1870 & '71, I was in said city frequently for a few days at a time. During A. D. 1872 & '73, I was in said city for about (5) five consecutive months, beginning with November, A. D. 1772. I resided at Mrs. P. W. Tefft's, on the southwest corner of Jones and Bull streets.

3. To the third interrogatory she says: I knew Mrs. P. W. Tefft, in the said city of Savannah. I knew Mrs. P. W. Tefft for three or four years, and knew her quite intimately; I first became acquainted with the said Mrs. Tefft during A. D. 1870.

240 4. To the fourth interrogatory she says: She both spoke to me and in my presence of and about the house she lived in on the southwest corner of Jones and Bull streets, in the city of Savannah. Mrs. P. W. Tefft said that the said house was built by her husband, assisted by her sons, and that her husband asked her to assist them in building it and that she refused to put any of her own money in it. Mrs. Tefft said that her husband told her sons to put money in the said property on said corner of Jones and Bull streets, as it would be an investment which would prove a good return, as property would increase in value; and that said property on said corner of Jones and Bull streets would belong to them—the said sons—in the end anyway. She often to me and in my presence acknowledged that Mrs. Sarah S. Walden had a claim to the said house and lot on said corner of Jones and Bull streets.

5. To the fifth interrogatory she says: Mrs. P. W. Tefft has stated to me the time when the said house was built on said lot, but I can't remember the date. The manner in which she stated that said house was built has already been set forth herein in answer to one of the fore-

241 going interrogatories. Mrs. Tefft said that the money which her husband had invested in said property gave her a right to live in said house, but she did not assert her ownership to said property on said corner nor deny Mrs. Sarah S. Walden's claim and right to said property.

6. To the sixth interrogatory she says: Mrs. P. W. Tefft said that Judge Charles S. Henry was the trustee, and such was his connection with said property on said corner of Jones and Bull streets. Mrs. P. W. Teft said that Judge Charles S. Henry knew the rights and ownerships to and of said property; that he, the said Judge Henry, knew all about Mrs. Sarah S. Walden's claim to said property. The said Mrs. Tefft

stated of that if Judge Charles S. Henry had lived he would not have permitted her to sign any papers relating to said property, because he did not consider that she had a right to do so.

7. To the seventh interrogatory she says: Mrs. P. W. Tefft said that the said D. S. Skinner was her nephew. I have heard her speak of Andrew M. Ross. The said Mrs. Tefft stated that the said D. S. Skinner took her in a carriage to the house of the said Andrew M. Ross and got
242 her to sign certain papers which she thought were proper, giving away the said property to the said D. S. Skinner. Mrs. Tefft stated that the said D. S. Skinner and the said A. M. Ross gave her a fine lunch and plenty of wine upon the said occasion when she went to the house of the said A. M. Ross. I have heard Mrs. P. W. Tefft often speak of the negroes Jimmie, and Scrappy, and Ann Rose Alexander, and her husband. Mrs. Tefft used to refer to the said negroes as "those vermin down in the cellar," and claimed that the said negroes had ill-treated her, and had robbed her of hundreds of dollars, and that she intended to put them out. Mrs. Tefft would often say very hard things against the said A. M. Ross, calling him sometimes very bitter and vile names.

8. To the eighth interrogatory she says: Mrs. P. W. Tefft several times confessed to me that she had destroyed certain papers belonging to the said Mrs. Sarah S. Walden, and relating to the said property on the said corner of Jones and Bull streets, in the city of Savannah. Mrs. Tefft said that the destruction of said papers should work no hurt or injury to Mrs. Sarah S. Walden, as she would make a will leaving the said property to the said Mrs. Sarah S. Walden. During the five months when I had apartments at Mrs. P. W. Tefft's, on said cor-
243 ner of Jones and Bull streets, Mrs. Sarah S. Walden and Mrs. P. W. Tefft were on friendly terms. Mrs. Tefft looked to Mrs. Walden for the management of affairs purtaining to the house. Mrs. Walden always paid the bills arising from the household management, sometimes paying said bills with her own money and sometimes with Mrs. Tefft's money. Mrs. Walden was very kind to Mrs. Tefft, extending to Mrs. Tefft a great deal of personal care and attention, and often, when the servants in the house would decline to render service to Mrs. Tefft, Mrs. Walden would perform the duties herself.

Nothing further was stated in answer to the direct interrogatories.

1. I do not regard the statements herein set forth and made by Mrs. P. W. Tefft as springing from a loose and general conversation. Some of the said statements were made by Mrs. Tefft to me when we were together, and some of the said statements were made by Mrs. Tefft to Mrs. Walden when I was present, when Mrs. Walden and Mrs. Tefft were talking over their family matters and discussing the said property on the said corner of Jones and Bull streets.

244 2. I was intimate with Mrs. Tefft, and believe that she liked me very much; and she would talk to me, and in my presence, in reference to said matters.

3. I know a great deal of the private affairs of the Tefft family.

4. The information which I have of the question involved in this controversy has been herein set forth in answer to the foregoing and annexed interrogatories, and such information was derived under such circumstances as described and set forth herein in the foregoing answers.

5. I have not seen or spoken to Mrs. Sarah S. Walden in the course of seventeen or eighteen months last past.

6. Mrs. Sarah S. Walden has never made an effort to remind me of

the matters referred to in the foregoing answers, and what I have stated I remember independently of Mrs. Walden to remind me.

7. Mrs. Sarah S. Walden never reminded me of the said statements. I attached importance to the said statements of Mrs. Tefft at the time they were made, for I knew enough about property to know that
245 they were important.

8. I am not in any way related to Mrs. Walden.

9. Mrs. Sarah S. Walden was not always present when the said statements were made by Mrs. Tefft and the said statements by Mrs. Tefft were not prompted by Mrs. Walden.

10. I do not know that for a long time before Mrs. Tefft's death that Mrs. Walden was trying to get Mrs. Tefft to give her the house and lot referred to.

11. I am not acquainted with Darius S. Skinner.

12. I heard Mrs. Tefft say that Darius S. Skinner was her nephew.

13. I do not know Mr. and Mrs. Ross; I know the negroes Jimmie, Scrappy and Ann Rose Alexander.

I happen to know what I have stated in the foregoing answers because I was acquainted with Mrs. P. W. Tefft, was a frequent visitor at her house, and knew her for a long time, and was intimately associated with her and lived at her house for about five consecutive months. I saw Mrs. Tefft constantly and conversed with her from time to time;
246 our conversations were sometimes much longer than at other times. The said statements were made by Mrs. Tefft in the said house on the said corner of Jones and Bull streets in the said city of Savannah, and during the time I had apartments in said house, from a period beginning in November, A. D. 1872, extending over five months. I don't remember any particular day upon which any of said statements were made, but they were from time to time during the period which I have mentioned.

No further answer was made to the cross-interrogatories.

ELIZABETH A. DOANE.

Subscribed and sworn to this 19th day of November, A. D. 1874, before us; the witness having carefully read over the answers before signing the same.

GEO. T. BETTS,
U. S. Comm'r for So. Dist. N. Y.,
WILLIAM A. SHORTER,
Comm'r named herein,
Commissioners.

Copies of papers introduced as evidence by complainant.

247 STATE OF GEORGIA,
Chatham County:

Whereas we, Henry D. Tefft, Wm. P. Tefft and Charles E. Tefft, of the city of Savannah, State and county aforesaid, children of Israel K. Penelope W. Tefft, are entitled under a certain deed of trust to a reversionary interest in remainder after the death of our mother, Mrs. Penelope W. Tefft, in and to all that lot of land situate and being in said city and known and distinguished in the plan of said city as lot number twenty-three (23), Warren ward. And whereas it is for interest of all concerned therein that said lot and improvement thereon should be sold by our trustee, Charles S. Henry, esq., and good and sufficient titles be executed by him to the purchaser therefor; and we and each of us having attained the age of twenty-one years, and being desirous that said

lot and improvements should be sold by our said trustee, and the proceeds thereof invested by him in other real estate in the city of Savannah:

Now know all men by these presents that we, the said Henry D. Tefft, William P. Tefft, and Charles E. Tefft, have jointly and severally
248 made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint Charles S. Henry, esq., of the State and county aforesaid, our true and lawful attorney, for us and in our names to bargain and sell for the best price which can be obtained therefor all our and each of our right, title and estate in and to the said lot No. 23, Warren ward, and with all and singular the improvements to the same belonging or appertaining, and upon such sale and the receipt of the consideration money therefor to sign, seal, execute and deliver to the purchaser, for us and in our names, a good and sufficient deed in the law for the purpose of more fully and effectually conveying and assuring to the purchasers all our present or future estate, right & title therein, with such covenants of warranty and quiet enjoyment or against incumbrances as to him shall seem most prudent and proper, hereby giving unto our said attorney full power and authority in the premises, and hereby promise to ratify, confirm and allow all that our said attorney may do or cause to be done in the premises.

In witness whereof we and each of us have hereunto set our
249 hands and seals this twenty-first day of May, in the year of our Lord one thousand eight hundred and forty nine

HENRY D. TEFFT, [L. S.]
W. P. TEFFT, [L. S.]
CHAS. E. TEFFT, [L. S.]

Signed, sealed and delivered in presence of—

A. PORTER,
J. J. C. C. C.

STATE OF GEORGIA,
Chatham County:

In the name of God, amen. I, Charles Carroll Walden, of the above county and State, being in moderate health of body, but of sound and disposing mind, remembering that it is appointed unto all men to die, and wishing to make a deposition by will of the earthly goods with which a kind Providence has blessed me, do make, ordain, and publish this my last will and testament, hereby revoking all former wills & testaments made by me.

First. I bequeath to my beloved wife, Sarah Frances Walden, all the property, of whatsoever nature it may consist, which she held, owned, or possessed before our intermarriage, and which became mine by said marriage.

250 Second. I bequeath to my son Franklin Walden my watch.

Third. I bequeath to my daughter Julia the silver plate formerly belonging to her mother.

Fourth. I bequeath to my son Duncan the portrait of myself and his mother, taken in water colors; also the silver pap-cup left me by my grandmother.

Fifth. To each of my above named children I bequeath one of my paintings, each to select for himself or herself, the oldest taking the first choice.

Sixth. It is my will that the rest of my property, of whatsoever nature it may consist, whether real or personal or mixed, including ten thousand dollars in the stock of the Cuban Telegraph Company, should be equally divided between my aforesaid wife Sarah Frances, my son

Franklin, and daughter Julia, & my son Duncan, each share and share alike, each being entitled to one-fourth of the same.

Seventh. It is my will that when peace is declared between the Confederate & the United States Governments that my children m'y select their place of residence, each for himself or herself, whether they will remain with my wife or their relatives at the North.

251 Eighth. It is my will that my executors hereinafter named have full power to sell & dispose of any & all portions of my estate & make title thereto, as in their judgments will best promote the interest of my estate (excepting, however, the special bequests named in the first, second, third, fourth, & fifth items of this will), & that without any order or decree of any court, & to reinvest the money arising from said sale as they may deem best, and I appoint my friends, Edward Padelford and William S. Rockwell executors to this my last will and testament.

In testimony whereof I hereunto set my hand and seal this 23d day of October, in the year eighteen hundred & sixty-one.

C. C. WALDEN. [SEAL.]

Signed and sealed in our presence by Charles C. Walden, who declares the foregoing to be his last will and testament, & we sign in his presence and in presence of each other.

JOHN R. JOHNSON.
JAMES E. GRADY.
E. H. BACON,
Notary Public, C. C., G'a.

252 STATE OF GEORGIA,
Chatham County, Ordinary's Office, ss:

I, Hampton L. Ferrill, deputy clerk of the court of ordinary of Chatham County, State of Georgia, do hereby certify the annexed and foregoing instrument of writing to be a true and faithful copy of the last will and testament of Charles C. Walden, deceased, as appears, reference being had to the original on file and of record in this office; and I further certify that said will has been duly admitted to probate in common form in this court.

In witness whereof I have hereunto set my hand and affixed the seal of the court of ordinary, at the city of Savannah, county and State aforesaid, the fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] HAMPTON L. FERRILL,
Clerk of the Court of Ordinary, Chatham Co., G'a.

253 STATE OF GEORGIA,
Chatham County, Ordinary's Office, ss:

I, John O. Ferrill, judge of the court of ordinary of Chatham County, State of Georgia, do hereby certify that Hampton L. Ferrill, who signed the foregoing certificate, is, and was at the time of signing the same, the duly qualified deputy clerk of my court; that the attestation is in due form of law, and that his official acts are entitled to full faith and credit.

Witness my official signature, at the city of Savannah, this fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

JNO. O. FERRILL,
Judge of the Court of Ordinary, Chatham Co., Ga.

STATE OF GEORGIA,
Chatham County, Ordinary's Office, ss:

I, Hampton L. Ferrill, clerk of court of ordinary of Chatham County, State of Georgia, do hereby certify that John O. Ferrill, who
254 signed the foregoing certificate, is, and was at the time of signing the same, the judge of the court of ordinary of Chatham County, Georgia, duly elected, commissioned, and qualified.

In witness whereof I have hereunto set my hand and affixed the seal of the court of ordinary, at the city of Savannah, county and State aforesaid, the fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] HAMPTON L. FERRILL,
Clerk of the Court of Ordinary, Chatham Co., Ga.

255 STATE OF GEORGIA,
City of Savannah:

This indenture, made the nineteenth of July, in the year of our Lord one thousand eight hundred and forty-eight, and in the seventy-third year of the Independence of the United States of America, between the mayor and aldermen of the city of Savannah and hamlets thereof, in the State of Georgia, of the one part, and Charles S. Henry, trustee for Mrs. Penelope W. Tefft, wife of Israel K. Tefft, of the city and State aforesaid, of the other part.

Whereas, under and by virtue of an ordinance for that purpose made and passed by the mayor and aldermen of the city of Savannah aforesaid, on the fourth day of March, one thousand eight hundred and forty-seven, a certain portion of the South Common was laid out into lots, and the said lots, after being duly valued, were exposed to public sale on the terms and conditions mentioned and contained in the said ordinance; and whereas the lot hereinafter mentioned, being valued at twelve hundred dollars, was set up at that sum, and there was bid there-
256 upon, as increase money, one dollars, at which sums the said Charles S. Henry, trustee, being the highest bidder, became the purchaser of the said lot; and whereas the said Charles S. Henry, trustee, having paid into the city treasury the sum of two hundred and forty-one dollars, being twenty per cent. on the original valuation of said lot and premises hereby conveyed and the increase money thereof, hath made his election, for the present, of retaining the valuation money in his own hands, and paying a ground rent for the use and occupation of said lot, which ground rent at and after the rate mentioned in the said ordinance will amount to fifty-seven $\frac{60}{100}$ dollars per year:

Now, therefore, this indenture witnesseth, that the said mayor and aldermen, for and in consideration the of the said sum of two hundred and forty one dollars being paid into the city treasury, as by a receipt for the same endorsed hereon and signed by the city treasurer will appear, and also in consideration of the rent to be paid, and of the several covenants and agreements to be performed, have bargained and sold, and by these presents do bargain and sell unto the said Charles S. Henry (trustee) all that lot of land situate, lying, and being in that portion of
257 ground lately in the South Common, now called Monterey ward, known by the number five (5), and containing sixty feet in length and one hundred feet in depth, with the rights, members, and appurtenances thereof:

To have and to hold the said lot, with all and singular the advantages thereunto belonging, unto the said Charles S. Henry, trustee, his exec-

utors, administrators, and assigns, forever, on this express condition, nevertheless, that he, the said Charles S. Henry (trustee), his executors, administrators, and assigns, do and shall yearly and every year during such time as the said valuation-money shall remain unpaid, by four equal and quarter-yearly payments, pay or cause to be paid into the city treasury of Savannah aforesaid the sum of fifty-seven $\frac{60}{100}$ dollars as ground rent for the use and occupation of the said lot and premises, the first quarterly payment to be made on the nineteenth day of October next ensuing; and in case of failure herein for the space of twenty days after any of the said quarterly payments shall become due, that then the said lot and premises shall revert to the corporation of the said city, who shall immediately thereafter possess the power of re entry; and having by means of their proper officers exercised such power, and given
258 a notice thereof in writing posted on the premises, the said lot, with all improvements thereon, shall be as if the same had not been bargained for or purchased, any sale or incumbrance or other act made or suffered by the said C. S. Henry (trustee), his executors, administrators, or assigns, or others under him or them, to the contrary in anywise notwithstanding; and the said Charles S. Henry (trustee), for himself, his heirs, executors, and administrators, and every of them, doth hereby covenant, grant, and agree to and with the said mayor and aldermen, and their successors in office for the time being, that the said annual ground-rent shall be well and truly paid into the city treasury by quarterly payments as aforesaid, according to the true intent and meaning of the said ordinance and of these presents; and that, in case of failure therein, it shall and may be lawful for such re-entry to be made and for all such other proceedings to be used as in and by the said ordinance and the condition aforesaid are pointed out and directed, the said Charles S. Henry (trustee) in that case, for himself, his heirs, executors, administrators, and assigns, and every of them, hereby renouncing and releasing all claim whatsoever, both in law and
259 equity, to the said lot, with the improvements then thereon being; and it is hereby declared to be the true intent and meaning of these presents, and of all parties to same, that, on payment of the said ground-rent at the times and after the manner hereinbefore directed, the said Charles S. Henry (trustee), his heirs, executors, administrators, and assigns, shall and may from time to time, and at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the said lot and premises, and receive and take the rents, issues, and profits thereof, and of every part thereof, to him and his own use, absolutely, without the let, suit, trouble, eviction, or denial of the said corporation, or of any person or persons whatsoever acting under them or by virtue of their authority, subject only to such assessments and burthens as shall be in common with other lot-holders in the said city. And, lastly, it is hereby provided and agreed that it shall at any future time be in the power of the said Charles S. Henry (trustee), his heirs, executors, administrators, or assigns, if he or they shall so incline, to pay in the said valuation-money to the city treasury, with what rent may be
260 due up to that time, in full discharge and extinguishment of the said ground rent; and in that case there shall be an acknowledgement of such payment under the seal of the city, signed by the mayor and a majority of the aldermen for the time being, and attested by the city clerk, endorsed on these presents, which shall then and from thenceforth vest an absolute estate, in fee simple, of and in the said lot and premises, in the said Charles S. Henry (trustee), his heirs and assigns, to his and their only proper use and behoof, forever.

In witness whereof the parties aforesaid their hands have hereunto interchangeably set, and have also put these presents under seal in manner directed by the said ordinance, the day and year first above written.

[L. S. OF SAV'H.] H. K. BURROUGHS, *Mayor.*
HENRY HARPER.
A. A. SMETS.
SEABORN GOODALL.
THO. H. HARDEN.
ROBERT A. ALLEN.
HIRAM ROBERTS.
ROE A. LEWIS.

Attest:

C. C. DAVENPORT, *C. C.*

Signed, sealed, and delivered in presence of—
A. C. DAVENPORT, C. C. [L. S. OF SAV'H.]
JOHN C. HUNTER.
JOHN S. MONTMOLLIN.

Received, Savannah, 8th Sept., 1848, from Charles S. Henry, esq., trustee Mrs. Penelope W. Tefft, two hundred and forty-one dollars,
261 being 20% on valuation of lot No. 5, Monterey ward, and one dollar for increase on said lot.

JOHN C. HUNTER,
City Treasurer.

20% on $1,200	240
Increase	1
	$241

(Endorsed:)

GEORGIA,
Chatham County:

CLERK'S OFFICE SUPERIOR COURT.

Recorded in book FFF, folios 405, 6, 7.
March 2nd, 1849.

JNO. E. DAVIS,
Clerk S. C. C. C.

Fee, $2.

262 GEORGIA,
Chatham County:

This indenture, made this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and thirty-one, between Elias Fort, of the city of Savannah, merchant, of the first part, and Charles S. Henry and Stephen C. Greene, of the said city of Savannah, of the second part, trustees for Mrs. Penelope W. Tefft, wife of Israel K. Tefft, and Henry D. Tefft, William P. B. Tefft & Charles Edward Tefft, children of the said Penelope W. & Israel K. Tefft.

Whereas Thomas B. Stubbs, of the town of Milledgeville, Mrs. Maria Susannah Delaney, and Francis D. Delaney, her husband, did, by indenture bearing date the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, for and in consideration of the sum of eight hundred and fifty dollars to them in hand paid, *did* sell and convey to the said party of the first part, his heirs,

executors, administrators, and assigns, forever, all that lot of land situate, lying, and being in the city of Savannah, and known and distinguished in the plan of the said city as lot number twenty-
263 three (23), Warren ward, containing sixty feet in length and ninety feet in depth, with all the buildings and improvements then thereunto belonging, subject nevertheless to the tenure, taxes, and assessment imposed on said lot, as in a deed to one Edward White set forth, as by reference to said deed will more fully appear:

Now, therefore, this indenture witnesseth that the said party of the first part, for and in consideration of the sum of eight hundred dollars to him in hand paid by the said party of the second part, trustees as aforesaid, at and before the ensealing and delivery of this indenture, the receipt whereof is hereby acknowledged, and for divers other good causes and considerations him hereunto moving, hath granted, bargained, sold, remised, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, remise, convey, and confirm unto the said parties of the second part, trustees as aforesaid, their heirs, executors and administrators, all that lot of land situate, lying and being in the city of Savannah, and known as lot number twenty-three (23), Warren ward, containing sixty feet in length and ninety feet in depth, together with all and singular the buildings and improvements to the same now belonging or in anywise appertaining, subject never-
264 theless to such taxes, assessments, or ground rent as are imposed on said lot by the mayor and aldermen of the city of Savannah by their deed conveying the same to one Edward White, bearing date the thirtieth day of June, in the year of our Lord one thousand eight hundred and six.

To have and to hold the above granted, bargained, and conveyed premises above described & hereby intended to be conveyed, together with all and singular the hereditaments and improvements to the same belonging or in any wise appertating, subject to the tax, assessment and ground rent aforesaid, to the said party of the second part, their heirs, executors, administrators, and assigns, forever, upon the following trusts and confidence, that is to say, first, upon trust to have and to hold the said lot and improvements above described and conveyed, subject to the taxes, assessments and ground rent imposed on the same by the mayor & aldermen of the city of Savannah aforesaid, to and for the sole and separate use, benefit and behoof of the said Penelope W. Tefft, wife of the said Israel K. Tefft, during her lifetime, and Henry D. Tefft, William P. B. Tefft, & Charles Edward Tefft, children of the said Penelope and Israel K. Tefft, and after the death of the said Penelope as tenants in common in equal parts. Secondly, upon trust that if
265 during the lifetime of the said Penelope W. Tefft it should be deemed advisable by her to sell and convey the said premises, then upon this further trust, that the said party of the second part, trustees as aforesaid, or the survivor of them, upon her application and with the consent of the said Penelope W. Tefft, signified by her being a party to said conveyance, will sell and convey the said lot and improvements for the best price which can be obtained for the same, to any person or persons whatsoever, without any application to a court of law or equity for that purpose, to authorize the same, and the proceeds thereof, upon the same trust as aforesaid, to invest in such other property or manner as the said Penelope shall direct and request, for the same use, benefit, and behoof. Thirdly, upon the trust, if the said Penlope W. Tefft shall not during her lifetime direct and request the said premises and improvements to be sold and conveyed as aforesaid,

and shall die without making and requesting such sale and conveyance, then upon this further trust, to have and to hold the said lot and improvements for the sole use and benefit of the said children, or the survivor or survivors of them, share and share alike, until the youngest shall arrive at the age of twenty-one years, at which time the said parties of the second part, upon the request of said child or children, are hereby authorized to sell & convey the said lot and improvement as aforesaid, subject to the ground rent aforesaid, for the best price which can be obtained for the same, and the proceeds thereof to pay and divide among the said children, or the survivor or survivors of them, share and share alike.

266

And I, the said Elias Fort, for myself, my heirs, executors, and administrators, the above bargained and conveyed premises unto the said Charles S. Henry and Stephen C. Greene, trustees as aforesaid, their heirs, executors, administrators, and assigns, shall and will forever warrant and defend against the claim or claims of all persons whatsoever.

In witness whereof I have hereunto set my hand and seal on the day and date first above written.

ELIAS FORT. [SEAL.]

Signed, sealed, and delivered in presence of us—
JOHN F. KACHLER.
JAS. S. PELOT, *J. P.*

267 *Testimony for defendant.*

Interrogatories propounded to Darius S. Skinner and Henrietta Skinner, his wife, material witnesses for defendant.

1. How were you related to Irael K. Tefft and Penelope W., his wife, both of Savannah, Georgia, but now deceased?

2. State what you know of the purchase by them, or either of them, of a certain lot in said city of Savannah, known as lot No. 5, Monterey ward, and where the money was obtained with which such purchase was made. State all you know or have heard the said I. K. Tefft and Mrs. Tefft say with reference to the pur*chase* for which such purchase was made, and the person or persons for whose benefit it was made.

3. State all you know or have heard the said I. K. Tefft or Mrs. Tefft say about the funds with which the house and improvements on said lot were built, and whence the said funds were obtained. State whether or not any money for that purpose was obtained from either of the sons of the said I. K. and Penelope W. Tefft, and, if so, from which of them, and how much.

268

4. Do you or not know anything, and what, about any policy or policies of insurance on the life of Henry D. Tefft? If yea, for what amount were they, and to whom payable? Were they or not ever paid, and to whom, and why were they paid to that person?

5. What were the circumstances of William P. Tefft from 1849 to the time of his death? What business was he engaged in, and with what success?

6. Do you or not know of any application by Mr. or Mrs. I. K. Tefft to either of their sons for assistance in money to build the said house, &c.? If yea, to which of them, and with what result?

7. Upon what terms did Mrs. Sarah S. Walden, after the death of her first husband, William P. Tefft, stand with Mr. and Mrs. I. K. Tefft? Do you or not know of her *of her* being often at their house? If yea, in

what capacity, and on what terms? State anything you may have heard Mr. or Mrs. I. K. Tefft say on that subject.

269 8. State all you have heard Mrs. Penelope W. Tefft say on the subject of her interest in the said lot No. 5, Monterey ward, and the house and improvements; and all that you know of her dealings with said property. State whether or not she treated it as her own sole property, exercising acts of sole ownership over it, and the like.

9. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JACKSON, LAWTON & BASINGER,
Sol's for D. S. Skinner.

Testimony of Darius S. Skinner.

1. To the first direct interrogatory, the witness, answering, saith: My mother, Mrs. Nancy Skinner, and wife of William Skinner, was the eldest daughter of Darius and Penelope B. Sessions, all late of Thompson, Windham County, Connecticut, deceased, and Mrs.

270 Penelope W. Tefft, wife of Israel K. Teft, both late of Savannah, Georgia, deceased, was my mother's only sister. These two sisters, Mrs. Nancy Skinner and Mrs. Penelope W. Tefft, were the only children of afore-named Darius and Penelope B. Sessions, of said Thompson. Mrs. Penelope W. Tefft, wife of Israel K. Tefft, was therefore my aunt, and the only sister of my mother, Nancy Skinner, of whom I am the only surviving child.

2. To the second direct interrogatory the witness, answering, saith: Mrs. Tefft, my aunt, repeatedly asserted to me that she purchased the lot whereon she lived from the mayor and aldermen of the city of Savannah, which I now know to have been lot five, Monterey ward of the city of Savannah, Georgia, with her own money, and that that purchase money came to her from receipts or income of previous investments. That the title to that lot was made at her request to Charles S. Henry, as trustee for her, that this property might be kept separate from her husband's and children, and not subject to any contingencies that might arise or occur to him or them from his former creditors, or any other vicissitudes of fortune to any of them, and that as she had until that date saved the proceeds of the investment of the money

271 from any such contingencies that she had received from her father by a sale to my father of a part of his estate for that purpose several years previous to his, her father's, death, that therefore she then was determined to retain possession of the same in her own right, so far as it was proper to do in compliance with the laws of the State of Georgia. This statement Mrs. Tefft made in the presence of her husband, Mr. I. K. Tefft, at my house, then 94 Broadway, in the city of Providence, during their visit to me there in September, 1857, just at the commencement of the great commercial panic of that year. She also repeated in substance the same statement to me when I visited her in the spring of 1868, when the late Mrs. Edward Padford was present, to whom she introduced me as her nephew and heir, and to whom she then said she had given to me her house. She also declared the same definitely to me in September, 1872, when I had gone out to Savannah from this city at her request to have such papers and titles made as would secure to me possession and ownership at her death of her house

and lot 5, Monterey ward Savannah, Georgia, at which time she added
that it not only was her wish to give it to me but that her husband
272 had expressed his wish to her that she should give the same to me.
After she gave me a deed of the estate she said that Mr. Tefft had proposed to her, after the death of their son Henry, to make a change in the titles, if he could prevail upon his remaining son to join in the building of her house then being built, that they might then be able to save the money they would get from their brother Henry's estate instead of its being squandered by them in expensive habits; that she refused to have any such mixed estate, as disagreeable circumstances had already arisen between herself and her son William's wife, and that she then declared her determination to stop her interest in the old estate from being put into the new house, if such must be the condition, but that on son William refusing his father to have his part go in, and her son Charles proposing to her to make her a present of his part of Henry's estate to finish the house with, she had joined her money to that, and with hers and that which Charles gave to her, her house was finished and the title had ever been hers as first made. That William took his part in all the estates to start in business with for himself and soon became involved in debt and failed. That Mr. Tefft continued until William's death to furnish William with money at
273 times to support himself and family with.

3. In answer to the third direct interrogatory the witness, answering, saith: Mr. I. K. Tefft, while visiting me in 1860, in speaking to me of their beautiful home, as he called it, said that ma, as he always affect onately called my aunt, "is a rich woman. She has her house and home, which Judge Henry holds for her as her trustee, and also has her servants, banking and other stocks, to support her in affluence in the event that my health should entirely fail and she should outlive me"; at which my aunt responded, "Yes, I have saved my money and invested it in my house and stocks, while Mr. Tefft has spent his in autographs and contributions to literary men." Mrs. Tefft, then speaking about the death and pecuniary circumstances of their son William, said that when her husband, Mr. Tefft, had requested her son William to let her have the money that he got from his brother Henry, that William angrily refused, saying that he wanted that and more for his own purposes, and that he, William, spent all the money he could get, but their son Charles told them not to worry about finishing the house,
274 that he would help out his mother in finishing it and give her his share as a present and also his share of the life insurance coming to him on his brother Henry's life, and that the life insurance and other money that he then presented her with amounted to about three thousand dollars for that purpose.

4. In answer to the fourth direct interrogatory the witness, answering, saith: Yes, I do; my cousin, Henry D. Tefft, with whom I was very intimate, stated to me that he had borrowed some money of Messrs. A. Low & Co., of Savannah, to go into business with at Syracuse, New York, and that to protect them against loss, should he not live to pay them, that he had effected in the Mutual Life Insurance Co., of New York, two policies on his life through its agent, Mr. Hunter, of Savannah, one of them of three thousand dollars and one for two thousand dollars, both payable to himself, so that in the event of his death it would pay his debt to them as creditors of his estate after his death, which did occur at my house in 1849. Some time in the fall after his, Henry D. Tefft's, death, at the request of William P. Tefft, I made

attestation to the fact of Henry D. Tefft's death at my house in
275 Providence upon documents referring to said policies that were required as proofs by said insurance company to enable the administrator on his estate to collect the amounts insured by said office on the life of his deceased brother, Henry. Henry had told me, while living, that some income was accruing on one or both of these policies. On one of them, as I recollect, there had accumulated about seventy dollars, in addition the sums first insured. I was afterwards informed by his administrator, his brother William, that they were paid to him, and have also been informed by an officer of the insurance company that they required an administrator to be appointed before they would pay policies or losses in such cases as that, and know that said William P. Tefft was appointed administrator for that purpose and received payment of the policies.

5. In answer to the fifth direct interrogatory the witness, answering, saith: He, William P. Tefft, was in bad circumstances in 1849, having separated from the firm of O'Driscoll and Company, of Savannah, and came North at the instance of his father-in-law, Mr. Darius Ses-
276 sions, to go into business with him, but having found him hopelessly involved in debts he gave it up, and afterwards, with his share of his brother Henry's estate and from the old estate, started in business on his own account during the fall of 1849, and from correspondence with him at that time I know soon after that he was seriously embarrassed pecuniarily and had considerable indebtedness overdue bearing upon him, and from his letters to me at that time I understood he continued insolvent until his death in 1852. I understood from his father and mother since that time that they were obliged to assist him with moderate sums of money to furnish a support for himself and family, as his business was so disastrous. He was engaged in a general commission business in Savannah, but to a small extent, as I recollect from correspondence which I had with him at that time.

6. In answer to the sixth direct interrogatory the witness, answering, saith: I only know of said application as answered in my replies to previous questions, and by the statement of Mrs. Tefft to me of the refusal of her son William to accede to his father's request and her
277 refusal to allow such procedure, and of the concurrence by Charles E. Tefft as a present to his mother of about three thousand dollars for that purpose.

7. To the seventh direct interrogatory the witness, answering, saith: My knowledge on that matter is only from what I have heard Mr. and Mrs. Tefft say about it. Mr. Tefft stated to me on his visit to my house in 1860, after Mrs. Walden had remarried to Walden, that he felt a great relief in having her off his hands, for that, as the widow of his son, himself and ma had felt in incumbent on them as a duty to their dead son to give her protection and a home and support as long as she remained unmarried and chose to accept it, as William had died entirely insolvent, and as they knew her father was in the same condition, hopelessly insolvent; her father's family being scattered and her father about that time being in a pauper asylum at Providence, Rhode Island; that ma was particularly urgent for him to do so; that Sarah (Mrs. Walden) had come and gone from their house at her pleasure up to the time of her remarriage with Walden; that both ma and himself felt that they had entirely complied with their promise to her of a
278 home and support as their son's, William's, widow. My aunt, Mrs. Tefft, was present when he said the above, and she added, as she was William's widow, we could not do otherwise; but as she is now married I hope she may do well, and am truly glad to be relieved

from her future support, and having the responsibility of her acts to meet any further. If she had remained unmarried I would have always given her a home in my house, and Mr. Tefft would have supported her. In 1872 Mrs. Tefft said to me that Sarah (Mrs. Walden) had come to them in trouble after her husband's, William's, death, and upon their invitation (her's and her husband's) as a guest and dependent upon them as their son William's widow. In another conversation with Mrs. Tefft about the same time, at the house of Mr. Andrew M. Ross, with Mr. & Mrs. Ross then present, Mrs. Tefft most emphatically declared that she owed nothing to Mrs. Walden for her services or otherwise, and that Mrs. Walden was then at her house upon her invitation as a guest, as she ever had been when there, and that while she stayed there she, Mrs. Tefft, paid for her meals at Mrs. Thompson's and supported her. In another conversation with my aunt within a day or two after the preceding one, she represented the same to me, and added,
279 "She is here now, as she always was, when your uncle was alive, as our guest, and I support her now, as we did then, at my expense, and she has not now nor ever had any just claims on me, my house, or my property, with the exception of being the widow of my poor dead son William."

8. To the eighth direct interrogatory the witness answering saith: In all my correspondence with my aunt, Penelope W. Tefft, and also in all conversations with her for the last twenty years from time to time during that time, she has invariably spoken and written of the estate, 5 Monterey ward, Savannah, as her property solely and entirely; that she has repeatedly conferred with me in relation to it in connection with taxes, insurance, public dues, improvements, and repairs, and she has shown me memoranda of the amounts paid for these purposes by her from 1865 to 1872, inclusive, while I was travelling to and from Texas and the Southwest. I never heard her title to the property questioned by any one until I attempted to obtain possession of it, according to my deed, after my aunts' death. Mrs. Tefft, at different times
280 previous to July 4th, 1872, told me of her sales of stock to enable her to make repairs, improvements, and pay public dues and support herself with, and declared also her greatest wish and determination was to leave that estate, or the proceeds of same, to me, unencumbered, at her death. After I lost my arm, in 1870, she said she more particularly desired to do so because I had had the misfortune of becoming crippled, and no other person had any just rights or claim upon her. I know, from her statements to me at different times for several years past, also her letters to me, that she always let her house, or any parts of it, to whom and when she pleased, and received the rental for it, and disposed of that as she saw fit, and that undisputed and unquestioned by Mrs. Walden or any other person, and whenever Mrs. Walden was there she, Mrs. Walden, only occupied such rooms in her (Mrs. Tefft's) house as she directed Mrs. Walden should so occupy. Her letters to me during the late war and since at various times constantly declare herself to be the owner of the house and estate, and her control thereof unquestioned by any one else or Mrs. Walden, to whom she not unfrequently refers in those letters in not precisely the most favorable terms.

Those letters, which, with many of the same general tenor, I have
281 received from my aunt, Mrs. P. W. Tefft, in due course of mail at different times from 1858 to 1866, inclusive, and they are in her, my aunt's (Mrs. P. W. Tefft's), own handwriting, which from my boyhood I have been familiar with, and I now hereby add them and produce them as a part of my reply and evidence in matters pertaining to this

cause, and identify and swear to each of the signatures and initials subscribed to each of said letters as Penelope W. Tefft's. (Witness produces the letters thus referred to by him to the commissioners, and they are annexed to this deposition and marked, respectively, Exhibits A, B, C, D, E, F, G, H, I, J, K. As to Exhibit D, the witness says the memorandum on envelope is in my handwriting, made by me at the date of its reception by me, July 23, 1864, after it had passed the Union lines by flag of truce, said letter not being dated.)

9. To the ninth direct interrogatory the witness answering saith: On Mrs. Tefft's visit to my house in the fall of 1865 she then related to me her sale of her estate by agreement to Mr. Robert Erwin, or Mr. Galloudet, and of the uneasiness which she suffered thereby upon
282 reconsidering the matter, as she would have to abandon her house and home, which had been hers for so long a time, and of the solicitous manner that she had made to them to get them to give up the purchase, and of her great relief when they consented to throw up the trade, and it is this sale, which she had previously written me about, and which she refers to in one of her letters produced to commissioners, dated Sept. 11, 1865. She also added that she had then rented her house and furniture, and that if she ever wished to do so she could go back to it and still have her own house and home to do as she pleased with. I know also that she afterwards rented part of her house to Gen. Henry Jackson and various other parties as she pleases. I know that Mrs. Sarah F. Walden knew that Mrs. Tefft had directed her former servant, James B. Matthews, to write to me to come out to Savannah immediately from Providence, in September, 1872, for the purpose of assisting her, Mrs. Tefft, to arrange her estate, as Mrs. Walden declared that such was the fact to me on my entry into Mrs. Tefft's house before I had seen my aunt, and laughingly asked me if I had been frightened at receiving such a peremptory letter as she had heard Mrs. Tefft dictate to be written me by her servant Jimmy, and said "I told ma
283 (Mrs. Tefft) she ought not to do so, as you might think something was wrong." I recollect that Henry D. Tefft told me, while staying in my house at Providence during his last sickness, that he had intended while in New York to have purchased some marble mant*les* and other marble work which he had promised his father and mother that he would buy and present to his mother for the new house that she was building, but that he was too ill to do so while he was there, and which he much regretted, and talked with me whether or not they could be bought and shipped from this place; that he had brought the money with him to make such purchases, and expected they would cost some seven or eight hundred dollars. I recollect that *I* day or two after that, on my return from business at evening, that Henry told me that he had given a roll of money and the keys of his trunks to my wife for her to take care of, saying that it contained some ten or eleven hundred dollars. His death occurred a day or two after that, and I saw my wife hand the keys & roll of money to his brother William, after first offering them to his brother Charles, who directed my wife to hand them to William, and from which William took twenty dollars and handed to me, with the request to use the same in paying any of the minor
284 expenses that would necessarily accrue in such circumstances. I know by the public records of this city of Providence that certain deeds, mortgages, and conveyances recorded therein, purporting to have been executed by said Sarah F. Walden, wherein she declares herself

to be a resident of this city of Providence, which said conveyances are dated from 1867 to 1872, inclusive.

DARIUS S. SKINNER.

Sworn to and subscribed before us this 14th day of October, A. D. 1874.

FRANCIS A. DANIELS,
WALTER B. VINCENT,
Com'n'rs.

(Exhibits referred to in foregoing testimony will be found on page 269.)

Testimony of Henrietta Skinner.

1. To the first direct interrogatory the witness, answering, saith: The relation, of course, was by my husband, Mrs. Tefft being his aunt, and Mr. Israel K. Tefft being my husband's uncle by marriage. That is all the relationship to me.

2. To the second direct interrogatory the witness, answering,
285 saith: All I know about it is what I have heard Mrs. Penelope W. Tefft, my husband's aunt, say, that the house that they lived in in the year 1860 was her's, and that the lot on which it was was bought by money received by her from her father. She told me that the money she received from her father was invested, so that the investments and the profits accumulating on said investments were sufficient for her to purchase said lot and partially build the house. I have always heard Uncle Tefft—that is, Israel K. Tefft—speak of it as ma's home and ma's house.

3. To the third direct interrogatory the witness, answering, saith: I don't know, except as I have above stated.

4. To the fourth direct interrogatory the witness, answering, saith: I don't know.

5. To the fifth direct interrogatory the witness, answering, saith: I don't know that.

6. To the sixth direct interrogatory the witness, answering, saith: I do not.

286 7. To the seventh direct interrogatory the witness, answering, saith: I have heard Mr. I. K. Tefft and Penelope W. Tefft say that, as the widow of their son, she was always welcome to come and stay there as long as she pleased, which she did do from time to time until she was remarried again. I know Mr. I. K. Tefft told me in my own house, while visiting me in 1860, that she caused them a great deal of trouble, but that they tolerated her because she was William's widow.

8. To the eighth direct interrogatory the witness, answering, saith: I have heard Mrs. Tefft, that is, Penelope W. Tefft, many times speak of her house, and heard her speak of the heavy taxes and expenses that she had to pay yearly on her home, and complain of her not having any one to consult or assist her in any way; and in her letters, when she would write to my husband, she would say that she wished that he (my husband) was there to assist her, and that she always meant to keep it free from encumbrances for my husband, as the property was his when she had done with it.

287 9. To the ninth direct interrogatory the witness answering saith: I received from Henry D. Tefft, my husband's cousin, some two days before his death, which occurred at our house here in Providence, in 1849, a roll of bank bills and the keys to his trunk, which he

requested me to take care of and put in some safe place, as there was ten or eleven hundred dollars in the roll which he gave me, which I carefully put away in my bureau. After his death, his brothers William and Charles being present, I handed the roll of bills and keys to Charles; he refused to take them, and told me to give them to William, which I did, and he accepted them. He gave Mr. Skinner, my husband, about twenty dollars from the roll of bills, saying that he would need it to pay the smaller expenses of Henry's death. I heard Henry tell my husband that he intended to buy and present to his mother some marble mantles and marble work for set wash-bowls for her new house, as he had promised them to her. He lived but three or four days after he told me that. I know that my husband and his aunt Penelope have always been on the most friendly and affectionate terms and regularly corresponded with each other as long as she lived; oftentimes
288 she called him, and in most of the letters, "my dear son," and in her own signature she would say from "your own mamma, P. W. Tefft"; and she expressed the greatest solicitation for him after the loss of his arm.

HENRIETTA SKINNER.

Sworn to and subscribed before us this 14th day of October, A. D. 1874.

FRANCIS A. DANIELS,
WALTER B. VINCENT,
Com'n'rs.

EXHIBIT A.

NEW YORK, 22*nd Sept.*, 1858.

MY DEAR NEPHEW: It was with mingled sorrow and surprise I read your letter of to-day. You say the reason, you hear, that your uncle and myself did not come to see you this year was because you were indebted to Brigham & Bolchair so large an amount, and that you were unable to pay it; that B. &. B were among our most intimate friends. I have only to say whoever told Henrietta this told a falsehood. In the first place, if you had owed B. & B. ten times more than you did
289 it did not concern me, only I am sorry for your misfortune. As for their acquaintance, I hardly know them when we meet; enough to say "How-de," that is all. I am sorry you paid any regard, you and Henrietta; no matter from what quarter it comes, it is all in toto a falsehood. I could not, in coming from Boston, pass through Providence and Thompson both; and as I paid you a visit last year I thought I would go to the graves of our loved ones, and I am truly glad I did go there; as I am now getting advanced in life, I may never go again. As to the boarding-house business, I might as well say I would not go to see Mrs. Hunter & Margaret and fifty other friends of mine because they take boarders. You said in one of your letters to me that you had a few borders, and if I spoke of it at all, which I must have done, it was in praise, and not against it. I assure you this is another falsehood, you may rely. You know me well enough that I've no such foolish pride about me as to say or think because a person has to work that I feel above them. I work myself, & hard enough too, and so does your uncle, & now we are getting old, we should not be obliged to go through what we do, & if I could have my way I
290 would break up housekeeping and board ourselves. As for your getting along, I meant nothing but good wishes that you had

employment to support and educate your daughters & your family, & for which I am glad to hear you do. I meant nothing, or have heard nothing, one way or the other, only what you said to me in your letter. I repeat, you must not believe anything you hear from that quarter relative to yourself or family, for I challenge the whole world to say that I ever breathed a word against you or Henrietta. You are the only blood tie I have, and what reason on earth could I have to think or speak against you. Both Henrietta and yourself have been uniformly kind and affectionate to me at all times, & I should be ungrateful indeed to say aught of either. I am sorry and regret your misfortune, for I have and do now suffer deeply in many things, and I should be the last to blame others for what has befallen ourselves. We are still here, not knowing what to do. The yellow fever is pretty bad in Savannah, and we may leave on Saturday or next week sometime. Your uncle is momently looking for a dispatch, and what we shall do is uncertain. The Herald this morning gives an increase of deaths in the last week in Savannah. I wish you could run on here some night
291 and spend the day with me, and if you wished could go back the next night, and then we would talk over matters and soon settle the affairs. I am truly sorry you feel so bad about it, but am not supprised; it is very, very natural, but think no more of it, for it is not true. Your uncle has just come in and he is *and he is* indignant at such meddling falsehoods, and swore not a little I can tell you. Write me at once, and rememeber me to Henrietta and the girls, in which your uncle joins, and with much love from myself, I am as ever your old affectionate aunty.

P. W. TEFFT.

EXHIBIT B.

SAVANNAH, *2d January*, 1863.

MY DEAR NEPHEW: As an opportunity has presented itself by a flag of truce going to Port Royal, I will try to write you, although I have rheumatism in my hands so severely that I can scarce hold my pen, and it is fast tending to my lungs. I have been sick for the last three months; I wrote you two months since, but doubt if it has
292 reached you; I think, perhaps, you have never heard of the death of your uncle; he died the 30th of June, after an illness of three months, most of the time confined to his bed; his disease terminated in dropsy; he suffered much and long. I have rented my house for one year with the furniture for twelve hundred dollars per year; I am now boarding at the Pulaski House at one hundred dollars per month; I shall spend the winter here, and if times are better, go away in the summer and return to my house in the fall, if I live to see that time. Sarah is at a private boarding-house at much less board; I have not heard from you for a long time, not since the last letter written by Rose to her sister. The weather is very cold here this winter and the times hard; although we are surrounded by wood, it is fourteen dollars a cord. I wish it were so that you could come out here for a few weeks, but you cannot; I have a will in which I have provided something for you all, if the war ceases before I die, if not it will go where I would be sorry to have it fall; to-day the weather seems warmer; I have sold my carriage and am now walking when I go out, which is not often.

Life is indeed sad for me and has no longer any charms for me;
293 all have been swept away, and left me alone in a cold and selfish

world; thank God my mind is all I could wish it, and if my health was equal to my mind, I would indeed be very grateful.

With much love to Henrietta, and the young ladies, and to Sarah's sisters, believe me your old aunty in deep sorrow.

P. W. T.

EXHIBIT C.

SAVANNAH, *24th May*, 1863.

MY DEAR NEPHEW: I received your thrice welcome letter by the way of Nassau, and replied in the way pointed out to me by your friend, which I trust you have received. I have a friend who goes to Nassau to morrow, and I hope he will reach his destination in safety; he has offered to take a few lines for me; I will accept his offer, hoping and praying it may reach you in safety; my health is far from good, some difficulty of my lungs, great soreness across my chest. I shall not live to see you, I think, again; I am boarding at the Pulaski House at three dollars and fifty cents per day; my house-rent does not pay my
294 board by considerable, and I have one of the worst and most disagreeable old tenants in the world. I told him I deeply regretted ever having rented him my beautiful home, and whenever he wished I would take it off his hands; I shall go back in November, if I live to that time, and get along as well as I can; I am uneasy as to my property here; if I die before the war is over, all will go to my nearest blood relation in the Confederacy, and you know that Sarah, except what legacies I have left to my Southern friends, and I know of no way to avoid it; both yourself and Margaret H. will be cut off from everything I have left you in my will; my negroes cannot be left free, but I wish them to pay little wages to my executors when I am gone, as little as the law will allow. Judge Henry has my will and some other papers of mine; he and yourself are the executors; I wish you could come out here, but that is impossible, I suppose. Sarah is teaching in a family in the country at four hundred dollars a year with board and washing, &c., &c.; she is over one hundred miles from the city. Write me when you can; I've only once heard from you, and I wish the war was over; I am s) tired of soldiers and clamor; provisions very high. With much
295 love to Henrietta and the children, I am as ever your sad old aunty.

P. W. T.

Tell the Sessions girls "How-de."

EXHIBIT D.

MY DEAR NEPHEW: It is so long since I have heard from you, and have so often written you that I am quite discouraged, and would think you were dead, only Sarah hears from her sisters at times, and they speak of you as being well, or I would think you and yours were all dead; my own health is indifferent; I am old, and I came to my own sad home to protect it; after renting it one year, and all the furniture and library, I was heartily sick of it. When the war is over, if I live, I shall sell my house, &c., and go to a cooler climate, but I doubt if I live until that time if it is prolonged at a later period. I want some mourning-goods sadly; can you not send some by your friend Olney? I am so anxious to see you all once more; the times are frightful. If I could leave here for England, or any place where there would be peace, how glad I would be. I get letters from the North by flag of
296 truce, and why do you not write me? The weather is very warm

and sultry. Poor uncle has been dead nearly two years, since which I have no male friend or adviser; besides the taxes are going ruin me. With love to all. Send me some crape, &c., and write me soon, very soon, and believe me, your sad aunt.

P. W. T.

(No date to above. Received July 23rd, 1864.)

EXHIBIT E.

SAVANNAH, 2*d Feb'y*, 1865.

MY DEAR SON: I received your kind and welcome letter (with its inclosure) in four days after you wrote. I could not help shedding tears to hear from you, as I have no one to give me a word of kindness or sympathy now that I am old and alone in the world. You speak of sending me some provisions, anything; say a ham or two, some pork or some smoked sausages, some coffee and tea, sugar, butter, lard, or anything; we have suffered very much; it has taken all I could get to feed myself;
I have not bought me any clothes; I am sadly in want of
297 flannel, stockings, shoes, No. 2½, gloves, a large black shawl, and
a black worsted dress, either mouslin or merino, and a crape vail and black ribbon. I have never had a crape vail, except a friend gave me a second-hand one, which I have worn ever since the death of poor Mr. Teff. You speak of coming out; I wish you could, but you must wait a little until the weather comes a little warmer. I must either sell my house or rent it for a support; the government will not let me do the former, claiming all property as theirs for the present; you have no idea of the dishonesty and robbery of the people. I have already had two letters from the North about my autographs; I shall not part with them until I can see you; they are worth a great deal of money either in this country or in England. I shall come and stay with you if I am obliged to give up my dear and pleasant home here, but will divide my time with you and yours, and with some other kind friends, making always your home mine. I am waiting to get my papers from a friend who has among them my will; I shall destroy it, as I could not leave anything I had out of the Confederacy; I intend the greatest part of
298 silver to you and yours; I have some handsome pieces; I do not
know how I have got money to pay my taxes; they were in the last year sixteen hundred and fifty dollars, besides water-rent one hundred dollars, gas, insurance, ground rent, &c., &c. They taxed me fifty dollars for my library and autographs. I am very thankful to Henrietta for her interest in my clothes and the young ladies for their sympathy in my distress. I have had hard times in the last year, and have suffered more than tongue can tell; if I meet any more difficulty I will send for you at once; I sold all your uncle's wine and invested it in railroad stock, and that is all destroyed for a long time to come. I have never heard anything of Mr. Olney or anything from Nassau; whatever you let me have keep an account; I shall, if everything is not taken from me, have more than enough to repay you; with the exception of a few legacies all will be yours when I am no more; Sarah is in the house with me, she boards herself and is much worried in not hearing from her sisters; this is written very badly, and you must excuse an old body for bad writing and in much haste. Poor Mr. Everett, he has gone;
he was an old friend of your uncle's; I am sorry to hear of his
299 course in politics; you say you wish you could be with me an
hour; it would not be half long enough for me even to tell you one-half of the many things I have endured of things, but if ever we

meet I shall surprise you; do write me as soon and as often as you can; the mails are very stringent; I believe I told you that General Sherman I knew many years ago; he spent two evenings with me and is very pleasant and agreeable in private life; while in Savannah he had many old acquaintances, as he was stationed here in 1845 and 1846; my hands are very cold, and I have written a long letter this morning to Philadelphia, and I must close my sad scrawl with love to all. I am your old mama.

MRS. I. K. TEFFT.

I wish when you hear or see Maggie Hunter you will give her my love and tell her I will answer her letter by Mrs. and Miss Carter, who will soon leave here for the North.

This is Confederate paper, as you can see, very poor.

300 EXHIBIT F.

SAVANNAH, 12 *February*, 1865.

MY DEAR NEPHEW: I received your second letter of January 29th, and was glad to hear from you. I think, perhaps, I was not explicit enough in saying to you that the fifty dollar greenback was safely received, for which I am greatly obliged for your timely consideration in these dreadful times. The greenbacks are not very plentiful here, only what were brought here by the soldiers; and the "sharks," as you term them, have gotten the most of them back again with their thousand and one little shops; their goods are very high as yet; I have managed to get a little of their provisions, such as butter, lard, mackerel, &c. Brown sugar is yet fifty cents per pound, and butter ninety-five cents per pound; but thousands cannot get them for the want of money. I had by me when the army came in two hundred dollars in Confederate money; I sent one-half of it in the country for provisions, but suppose I shall get very little for it. We are entirely cut off from the
301 country, and are not even allowed to go to the graveyard without a permit, just on the edge of the city, therefore we know nothing of the country any more than if we were in India. You advise me not to sell my house in haste; I could not if I would; my house belongs to the government, and if I were to attempt to dispose of it, I should at once be stopped; I know an acquaintance who attempted it and was threatened with an arrest and had to stop it. If I were to shut up my house, it would at once be opened and occupied by officers; white persons are not allowed to be out after seven o'clock at night without a permit, while negroes prowl the streets the whole night without a permit; you see they are drawing the cords more and more tight every day. If you were to hear Mr. Low curse, you would have to laugh really; he calls them my Northern brethren; they and the Confederate tax-gatherer both have made me curse too; what is to be the end of all this no one can see, but to relinquish my house and home and go away. While I stay in my house it may be let alone, but I am not quite sure of that; what if I should even attempt, I have nothing else to support me, and then comes taxation with my other expenses;
302 but you will say, "Why does aunty growl so much." I cannot help myself, and I have no one to help me in any one thing, and I am not in a very amiable mood just now. I have had several gentlemen writing me and coming from the North about the autographs; I tell all not for less than fifteen or twenty thousand dollars; I want to realize something to support me, whether with you or wherever I am.

I am old, and shall not long want a support; my family are all gone; life has no charms for me now; I feel and know that your family will all be kind to me, but I want means to compensate me for my, perhaps, querelous disposition in old age.

When things get a little more calm, you must try and come out; I want you to see what I have and advise me what you think best; in the mean time I will economize all I can, and do as well as I can to live until warm weather, when I hope to break up housekeeping if I can. When I rented my house, I sold all my wine for over three hundred dollars & bought Central Railroad stock, and that too, is all destroyed. I had nowhere to place it in safety. You will hardly believe me
303 when I tell you that I have had but two bottles of wine since the Federals came into the city. I have not seen an egg since last August; they sold as high as twenty dollars per dozen. Since Sherman and his raiders have come through the country there are no fowls, or hogs, horses or cattle of any kind left. They spread desolation far and wide, and while in the city were constantly sending out foraging parties and brought in forage and provision for days and days to last them, and sometimes whole droves of beeves, and grain, flour, and even they stole bee-hives and brought with them; they even went to the pest house and negro cabins, and by this means introduced the small-pox in the city, where it has been very prevalent. We have had a cold winter as yet, and no coal; my rooms all have grates, which burns out wood very rapidly. I shall be rejoiced when the weather is a little milder. I think if I should wish a permit, that *a* shall have no trouble in getting one, but God only knows what may happen before that day. I am writing on Confederate paper; it is very soft and blotty. I read a portion of letter to Mr, Low; he says "You are a Democrat." I told him "Yes." That I should ever have lived to see these days, who
304 before have always had peace and plenty. With much love to Henrietta and the girls, write me soon and often; it affords me much gratification. From your old mama,

P. W. TEFFT.

Address to box 295, one of my neighbors.

EXHIBIT G.

SAVANNAH, 26 *March*, 1865.

MY DEAR NEPHEW: I received a week since your acceptable letter of the 27th Febr'y and I answered it on the 16th of March. I have not heard from you since the 29th of March, which is one month to-morrow. "Hope deferred maketh the heart sick." I am trying to get on, but the times are terrible. I should not write to you to day, but I went to see a sick friend on the 24th, and as I left the house was informed that there were two cases of small pox in the lower part of the house. It has made me quite unhappy, as I was vaccinated when young and have never come in contact with it before to my knowledge. I asked a physician and he advised me to be vaccinated at once, but I did not take
305 his advice; having much erysipilas in my system, though' it might make me very ill. Now, if I should chance to get it I may fall at my time of life; my silver is all packed, and wish you could have sent it on with many other things. I shall leave them here I am afraid. My will is in Macon, where many things are with it. Mr. Ross, a bank officer with your uncle, has them in his trunk of valuables and cannot get them as yet. He is one of my executors and Mr. Berrien Lovell the

other. The will I suppose is good for nothing, as it was made in Confederate times; however, I will try and get it changed; if not, and I should die before we meet, remember my property is all yours.

P. W. TEFFT.

MARCH 26TH, 1865.

Unless you come for it government will claim it all at once; keep this letter, it may be the last you will ever get from me. I am very enfeebled and wish I knew what to do. I cannot sell my house and I do not like to rent it with my furniture, and to sell my furniture, it would all sell for very little; everybody that thinks anything of themselves are going away and will be superceded by negroes; they are already bragging what houses they intend to take; we are in a most deplora-
306 ble state, unsafe everywhere and all about us. I have my old cook with me, of not much account, and Jimmie and Scrappy both have stayed with me, but will leave me when they can suit themselves better, I suppose. I support them but pay no wages; most person's servants have left them or pay them wages for their services; the weather is beautiful; let me hear soon from you, and if you intend to come. Is there no friend who could be trusted? I saw Richard Arnold and wife when here; I expect they went home thoroughly disgusted; they have lost all they had here, I suppose. With love to all, Henry and the girls, good-bye.

Your old mama,

P. W. T.

EXHIBIT H.

SAVANNAH, 16*th June*, 1865.

MY DEAR NEPHEW: It is now some time since I wrote you and longer since I have heard from you; on referring to dates, I find my last was the 5th of June; the mails are very uncertain here about going or coming; the weather is very hot and I am not well. I have received a very long
307 letter from a bookseller about the autographs; his name George A Lovette. He refers me to one of our booksellers here; he wishes them to sell at auction, but I have no catalogue of them and cannot say how many they are. I have engaged a man to catalogue them for me for one hundred and fifty dollars, for without a catalogue I cannot sell them. I have offered them all at twenty thousand dollars, and he can make whatever he can on the sale and pay for the catalogue. I know there are some very choice ones, and then again many inferior; so that he will take them off my hands I will be thankful, I am old and cannot bother myself about them, and I have no one to help me; I wish you could send out a reliable man to Savannah. I wish to send on some boxes and trunks, Charlie's books and my own, a trunk of silver, bed and table linen, and if I live I will come myself; but if the gentleman undertake to catalogue them it will take him two months at least; my house I will either sell or rent in the autumn; I dislike to sell my furniture, for it will sell for little at auction; my library, I fear, will not sell, and I may have to box up all my books and send them on to you. Nothing is safe here, and I have very little means to go upon, and must do something to
308 support me; I am far from being well and want some one to assist and advise me; I am very much worried night and day; the negroes all behave very badly, and are very dangerous since their freedom; have such a spite to the whites, all of them; if I could or would

dare to tell you all I see and hear I think some of your "abolition gentry" would open their eyes; if they could suffer and we not, it would be well, and I should not care. I would not dare to send my silver on by express, and they charge very high for their freight. The weather is severely hot and no rain; many of our citizens have left for the up-country and Europe; we will, I fear, have an insurrection before the summer is over; I am anxious to get away from here, but all I possess is here and I must stay and try and protect it. I was seventy years old last Christmas day, and I want to be relieved of care, and not the little time I have, and I feel it is very short; the times are fearful indeed. We have lost our very kind and good commander, General Grover; he has been sent away, and we have a new one for the present, who I hope may sympathize with us in our fearful days. Write me often, and remember me to Kitta and the young ladies, and believe me your sad mama.

PENELOPE.

309 EXHIBIT I.

SAVANNAH, 10*th July*, 1865.

MY DEAR NEPHEW: I received your long looked for letter of the 29th June; it was some time since I heard from you. I should have written by the mail of last Saturday, but have been very unwell from reaching for a book in my library, hurt myself inwardly, so much so that I can hardly move about without much pain. I notice what you say about the autographs. I have had them catalogued and there are not one-half the number I supposed. I am to pay the party for doing them when they are sold one hundred and fifty dollars. I have made an arrangement with Cooper, the bookseller here, to get what he can for them. Dr. Grosvend has never seen them, therefore knows only by hearsay what they are worth; this is a secret I am going to tell you: your uncle offered them, before he died, for ten thousand dollars, but I have offered them for twenty thousand, including the volume of the Signers of Independence, beautifully bound, and a volume of the Signers of the Constitution, all with engravings; if these were off my
310 mind and I had the means, I would come on and stay a month before selling or renting my house. I shall sell all my furniture if I can; nothing will sell now for any price; I have put several boxes and trunks of books and curtains, table and bed linen, which I wish I could send to you by a careful hand; my silver I will bring when I come; it is in a strong trunk and I can take it with me wherever I go. You have no idea of matters here; I shall keep all my scrips, &c.; but Major Porter told me yesterday that all the bank stock and confederate bonds were not worth a "chaw of tobacco." I may, after all, rent my house if I cannot sell it to advantage and for good securities; twenty thousand is the price, and if I have to sell for greenbacks, they have so depreciated that it will be only fifteen thousand in gold; it cost seventeen thousand; I have all the bills and expenses. When you are in Philadelphia go to No. 135 Delancy Place and ask for a very dear friend of mine, Mrs. Wetherill, and tell her who you are and she will tell you all about me and my house. She was a Miss Boben, of Savannah; I am sure you will be pleased with her. Her property is all here in the Al-
311 bany and Gulf Railroad; it will eventually be good, although the army destroyed much of it; she is very much distressed about it. If I only had what your uncle left me; he thought I was rich, but I have nothing but my house and library and furniture. I had an income

of three thousand a year, now scarce three hundred; but I shall not want anything long, I am old and feeble. With much love to Retta and the girls, I am

Your old mama,

P. W. T———.

EXHIBIT J.

SAVANNAH, 11*th September*, 1865.

MY DEAR NEPHEW: I wrote about a week since and have not heard from you. I sent the note to the post-office to Mr. Benjamin P. Johnson, and have not heard anything from him, but see by to-day's paper that he sailed for the North on the 9th, last Saturday. I think I may regret giving up my sale but it was too long a time for the notes to run. I did not reflect how short a time I might have to live, and then the trouble of getting the money would be different so far away,
312 and then my house is always good property; if I only had means to live upon I would not sell or rent. I shall be sure to do one or the other; having no gentleman to go out and assist me makes it bad for me. I am not well; rather paralytic at times. I wish I could come on, and if I can get anyone to stay in my house will try and do so. I have been trying to get my things in large boxes so that I may have less pieces to go; they are very large, four of them; one very large, with portraits and paintings. My silver I shall bring myself, and my autographs, to New York, but when that time will be I cannot say. If you could come or send an honest man to take them with him I should be relieved. My water rent will be due the first of November, and I hear a federal tax of two dollars on every hundred of real estate; they will have to sell my house for I cannot pay such an ernormous tax. I commenced this letter two days ago; nothing has happened since I began it. If I cannot rent my rooms to lodgers without board I will advertise my whole house and sell my furniture at auction. I am far from being well and fear every day I may have an attack of apoplexy, and then all will be lost, for there is one in this house, true,
313 private and still, but that will help herself to all I have if she can only get it. If you were in New York I could send everything to you at once, if I had to remain. I think I will send my trunk of silver by express if you will be there to receive, and tell me when you will be there and to whose care I shall address it so it may meet you on the spot; people are now so dishonest that it is really hard to trust anyone. I am worried half to death; I wish you was here to take my things, or that you would employ a careful person to take charge of them to New York, if I come; I am not well enough or able at my time of life to look after them. I am so weak that I cannot walk about but little; it may cost a little sum to send out a careful man, but the things are worth a great deal, and to you particularly. Write me what I shall do, for I have no male friend here. From your mama,

P. W. TEFFT.

EXHIBIT K.

SAVANNAH, 7*th June*, 1866.

MY DEAR NEPHEW: I received a short letter from you the day
314 before yesterday, and was very glad to hear the box by express had arrived safely, but you did not speak of a letter I wrote by

the mail inclosing a receipt for the box from the office, and a card visitte of Bishop Elliot, which I hope ere this has come to hand safely; the box was small, but I thought I would fill it, and so sent you the Life of Aaron Burr, which to me has been a most interesting work, and some historical pamphlets which I know may amuse you. I have no news of my papers with Mr. Leavitt, although I have twice written him. I am much obliged to you for your invitation to come to you, but I shall never leave Savannah again. I am too thankful to be in my own house and room to leave it again; so if you ever see me you will have to come and see me, and that soon, too. I have not long to live, I think; I walk with much difficulty; I go down my steps to go over to Mrs. Thompson's to my meals; this is the furthest I go. I wish I could ride, but unless I borrow money I cannot afford it. All I have is in my house, and should have to mortgage it to raise the money. I have been robbed of all I had and left a poor old desolate woman, but it is no matter, God will take care of me in my lonely and desolate situation. Mrs. Walden has been to see me to-day, and
315 told me good-bye, she sails for New York on Saturday; joy go with her. She is the worst enemy I have ever had in Savannah. She little dreams all she says of me is repeated to me, but I do not care; if they have suffered what I have she will not meet with any sympathy in the community. Many persons think she is going to marry again. I do not know, nor do I care; if she wishes to do so she has my hearty consent. The weather here is very hot and showers every day with severe thunder. I am so confined to the house that I know very little what is going on in the world outside, nor do I care. I long for some horse-radish and nuts; do hurry up the box before I go hence. I want to go, and there I hope to see my husband and children; nothing to live for; cannot go to church; a great deprivation to me. I pray God to spare my mind. I made a new will since my return home. You will find it with Mr. Ross, one or two legacies. That is all the difference; the rest is yours if you chose to come for it, and intend to live as well as I can the rest of my days. With love to Ritta, Charlie, Willie, Anna, and Aclab, I am your old desolate and sick mama,

P. W. T.

316 *Testimony of Andrew M. Ross and Mrs. Martha Ross.*

Interrogatories propounded to Andrew M. Ross and Mrs. Martha Ross, his wife, material witnesses for Darius S. Skinner.

1. Do you know the parties?

2. Had you any acquaintance with the late Israel K. Tefft and Mrs. P. W. Tefft, his wife, and their three sons, Henry, William, and Charles, during their lives? If yea, how long did you know them, and with what degree of intimacy?

3. State what you know or have heard Mr. or Mrs. I. K. Tefft say with regard to the sources from which money was obtained for the purchase of lot No. 5, Monterey ward, in the city of Savannah, or the erection of the house and improvements thereon. State what you know with regard to the purposes for which and the person or persons for whose benefit the said house was built?

317 4. What were the circumstances of William P. Tefft from 1849 to the time of his death? In what business was he engaged and with what success?

5. Did or did not Mrs. Walden ever reside with Mr. & Mrs. Tefft, or

with the latter after the death of Mr. Tefft? If yea, when, how long, and under what circumstances? On what terms were Mrs. Tefft and Mrs. Walden with each other?

6. State anything you know, or have heard Mrs. Tefft say on the subject of her rights and interest in the house and lot above-mentioned, and all that you know of her dealings with the property, whether or not she exercised sole ownership and control over it, and other matters of that sort.

7. Do you know, or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JACKSON, LAWTON & BASSINGER,
Sols. for D. S. Skinner.

318 *Cross-interrogatories.*

1. If you say in answer to the 3d direct interrogatory that you have heard Mr. and Mrs. I. K. Tefft speak in regard to the sources from which money was obtained to build the house on corner of Jones and Bull streets in Savannah, state fully when, where, and under what circumstances you were so made acquainted with the said sources from which money was derived and the purposes for whose benefit said house was erected.

2. If in answer to the 4th direct interrogatory you say that you knew of the circumstances of William P. Tefft from 1849, state fully and particularly how you became acquainted with his pecuniary condition and the success of his business enterprises. By whom were you informed, at what time, and how came you to be so informed?

3. If you say that you knew of the terms upon which Mrs. Tefft and Mrs. Walden were, state *to* times to which you allude and what
319 evidences there were that said terms were unpleasant. Did not Mrs. Tefft write for Mrs. Walden to come out from the north in the summer of 1872, and take care of her, and did she not frequently before that time write for Mrs. Walden to come back when she would go off on short visits? And was not Mrs. Tefft in a very deplorable condition when Mrs. Walden came to Savannah? Were not one or both of you frequently at Mrs. Tefft's residence, and did she not also frequently go to your house, and did not you both exercise over her considerable control, and were not the deed and will made by Mrs. Tefft on September, 1872, wherein D. S. Skinner was made sole beneficiary and heir, drawn up at your house by W. S. Bassinger, esqr.? Did you not have her at your house on several occasions by appointment to meet said Skinner, and did you not actively exert yourselves for sometime to bring about a reconcilation between Mrs. Tefft and said Skinner, and aid in procuring Mrs. Tefft to make said deed and will as those were made? Did you not correspond with said Skinner before he became reconciled to Mrs. Tefft, and did you not write
320 or telegraph, or cause a letter or telegram to be sent to said Skinner requesting him to come out to Savannah and endeavor to get Mrs. Tefft to leave him the property on corner Jones and Bull streets?

5. What were Mrs. Tefft' habits for some time before she died in respect to sobriety, and was she not often irritable, excitable, unreasonable, fretful, violent, and extremely changeable in her feelings, opinions,

and conduct? Was she not at times violently opposed to said Skinner, and did you not make it your business to pacify and allay her opposition to him in order that she might make the said will and deed in his favor? Was it not understood between yourself and said Skinner that when he got possession of the house that you should have an interest in it? Was not said Skinner very frequently at your house when in Savannah, and did not he always meet Mrs. Tefft there by your direct aid and management? In short, did you not actively interest yourself to bring Mrs. Tefft and said Skinner together, to reconcile them, and to procure her to make the said will and deed?

321 After the said will and deed were made, did you not take charge of them and keep them in your possession until the death of Mrs. Tefft; and did you not refuse to send them to Mrs. Tefft when she requested you to do so some time after they had been in your keeping?

7. State all else you know of that will be for the benefit of the comp'l'ts.

B. H. HILL & SON,
HENRY B. TOMPKINS,
Sols. for Comp'l't.

Testimony of Andrew M Ross.

1st. To the first direct interrogatory the witness answering saith: I know the parties.

2d. To the second direct interrogatory the witness answers: I know of the parties mentioned in this interrogatory. I first became acquainted with them in 1833. I knew all the parties for more than twenty years, and intimately.

322 3d. To the third direct interrogatory the witness answers: I don't know and never heard from Mr. or Mrs. Tefft anything about the sources from which they obtained the money for the purchase of the lot mentioned in this interrogatory, or the erection of the house and improvements thereon. The house was built for the benefit of Mrs. Tefft.

4th. To the fourth direct interrogatory the witness answers: From 1849 to the time of his death William P. Tefft was poor. He was in a commission business and with very little success. He died a bankrupt.

5th. To the fifth direct interrogatory the witness answers: After the death of William P. Tefft, whom Mrs. Walden married, she (Mrs. Walden) resided with Mr. and Mrs. I. K. Tefft. After the death of Mr. I. K. Tefft Mrs. Walden resided with Mrs. Tefft. While Mrs. Walden was with Mr. and Mrs. Tefft she married Mr. Walden and kept her own house till Mr. Walden's death, when she returned to Mr. and Mrs. Tefft's. I don't know how long she resided with Mr. Tefft and Mrs. Tefft. She did not reside with them constantly. She had no home and no

323 means and lived there as the widow of their son. Mrs. Tefft and Mrs. Walden were not on congenial terms with each other.

6th. To the sixth direct interrogatory the witness answers: The title of the property was in the name of Mrs. Tefft, and she exercised every right of ownership over the same. She always claimed the house and lot as her own, and often complained about the high taxes on the property. From time to time she rented the house, and I, as her agent, collected the rents, paid the taxes, insurance, &c., for her.

7. To the seventh direct interrogatory the witness answers: Mrs. Tefft often told me she intended to give this house and lot to Mr. Darius

S. Skinner. She expressed this as her desire years before her death. Mr. Skinner was her nephew and she thought a great deal of him.

324 1st. To the first cross-interrogatories the witness answering, says: I did not state in my answer to the third direct interrogatory that I knew from Mr. & Mrs. Tefft anything about the sources from which the money was obtained to build said house. When said house was being built Mr. Tefft told me that it was for his wife, Mrs. Tefft. I was intimate with Mr. Tefft, saw him often every day, and don't remember the time nor circumstances when and under which he told me the house was for his wife.

2d. To the second cross-interrogatory the witness answers: I was a common report in town that Mr. William P. Tefft had failed, and his father informed me of his failure. I don't remember the year, but everybody in town knew of the failure.

3d. To the third cross-interrogatory the witness answers: Mrs. Tefft told me at various times, which I don't remember, that she and Mrs. Walden were not on friendly terms. This was the only evidence I had of the terms between them. I do not know that Mrs. Tefft

325 ever wrote for Mrs. Walden to return. Mrs. Tefft was not in a deplorable state when Mrs. Walden came to Savannah. I was very seldom at Mrs. Tefft's residence, and she was very seldom at my house. I exercised no control over her. The deed and will referred to were not drawn up at my house, nor was any deed or will of Mrs. Tefft's drawn up at my house. I never had her by appointment at my house to meet Mr. Skinner, nor did I ever attempt to reconcile Mrs. Tefft and Mr. Skinner; did not know they had ever fallen out. I did not aid in procuring Mrs. Tefft to make said deed and will. I never wrote or telegraphed or caused a letter or telegram to be sent to Mr. Skinner requesting him to come out to Savannah for the purpose of getting Mrs. Tefft to leave him the property in question.

4th. To the fourth cross interrogatory the witness answers: Mrs. Tefft's habits were perfectly correct in regard to sobriety so far as I know, nor was she often irritable or in any of the moods mentioned, or changeable in her feelings or conduct a short time before she died.

326 I never knew her to be opposed to Mr. Skinner, nor did I make it my business to pacify her opposition to him for any purpose. It was not understood between myself and said Skinner that I should have an interest in said house when he got possession of it. All such intimations are absolutely false. Skinner was very seldom at my house, and never met her there by my management, but came with her to my house twice. She came in a carriage with Mr. Skinner once, and I went out with them to the cemetery, and she pointed out the place where she wished to be buried. I never interested myself to bring Mrs. Tefft and Mr. Skinner together for the purpose mentioned, nor for any other purpose.

5. To the fifth cross-interrogatory the witness answers: I never saw said deed, but had the will as her executor. I never refused to send Mrs. Tefft her papers. Edward, her servant, came to me saying that Mrs. Walden had sent for Mrs. Tefft's papers, but the boy said that Mrs. Tefft said I must not send them but keep them, and of course I did so.

6th. To the sixth cross-interrogatory the witness answers:

327 I know nothing further of benefit to complainant.

AND. M. ROSS.

Answered, sworn to, and subscribed before us, the undersigned commissioners, at Savannah, Georgia, this 17th day of October. A. D. 1874.

B. A. DENMARK, *Com'r.* [L. S.]
G. A. HOWELL, *Com'r.* [L. S.]

Testimony of Mrs. Martha J. Ross.

1st. To the first direct interrogatory the witness answers: I know the parties.

2d. To the second direct interrogatory the witness answers: I knew Mr. and Mrs. Tefft very intimately from 1848 to their deaths. Knew Charles Tefft well, and the other two slightly, from 1848 to the times of their death.

3d. To the third direct interrogatory the witness answers: I don't know nor did I ever hear Mr. or Mrs. Tefft say anything about
328 the sources from which the money was obtained with which to purchase the lot and erect the house in question. I know that Mr. Tefft had a considerable income independent of his situation in the bank. The said house was built for Mrs. Tefft's sole benefit, according to the statements of Mr. Tefft.

4th. To the fourth interrogatory the witness answers: I thought Mr. William P. Tefft always poor from 1849 to the time of his death. Of my own knowledge I don't know what his business was, nor what his success in it was.

5th. To the fifth direct interrogatory the witness answers: Occasionally Mrs. Walden resided with Mr. and Mrs. Tefft, and *after Mrs. Tefft* after Mr. Tefft's death. Mrs. Tefft said that she, Mrs. Walden, resided there as a guest, and as the widow of their son. Mrs. Tefft and Mrs. Walden were not on pleasant terms. I never knew them to be on pleasant terms.

6th. To the sixth direct interrogatory the witness answers: Mrs. Tefft always claimed the house as her own, and said she would
329 do with it as she pleased. She rented the house out from time to time, and exercised sole ownership over it. My husband, Mr. Ross, was her agent to collect the rents, pay taxes, &c. Sometimes Mr. Ross was sick, and I attended to this business for him.

7th. To the seventh direct interrogatory the witness answers: Mrs. Tefft stated at my house in my presence that she had always intended to leave this property to her nephew, Mr. Skinner, and that her husband had requested her to leave it to Mr. Skinner before her husband's death.

1st. To the first cross interrogato*ries* the witness answers: I did not state in my answer to the third direct interrogatory that I had ever heard from Mr. or Mrs. Tefft anything about the sources of the money used to build said house. I heard Mr. Tefft say it was built for his wife.

330 2d. To the second cross-interrogatory the witness answers: Mr. I. K. Tefft told me after the death of William P. Tefft of the pecuniary condition of the latter. I heard of his pecuniary condition during his life in the common rumours about the same.

3d. To the third cross-interrogatory the witness answers: I don't think Mrs. Tefft and Mrs. Walden were ever on pleasant terms. This I learned from visiting at the house and hearing them speak of each other. I never knew of Mrs. Tefft's writing to Mrs. Walden at all. Mrs. Tefft was not in a deplorable, but a very nice condition when Mrs. Walden came to Savannah. I was there the day after Mrs. Walden came. I

was at Mrs. Tefft's frequently before and during the war, but very seldom since the war. She was very seldom at my house. I never exercised any control whatever over Mrs. Tefft in any respect. The deed and will referred to, nor either of them, were drawn up in my house. Mrs. Tefft was never here by my appointment to meet Mr. Skinner, nor did I ever hear of any difference between them, or try to reconcile
331 them, nor did I have anything to do with procuring Mrs. Tefft to make said deed and will as they were made. I never corresponded with said Skinner, and only sent him one telegram, which was to tell him of Mrs. Tefft's death.

4th. To the fourth cross-interrogatory, the witness answers: As to sobriety Mrs. Tefft's habits were always proper, nor was she often irritable or subject to the other moods mentioned, nor subject to have her feelings change frequently, or her opinions or conduct. I never knew her to have opposition to Mr. Skinner; she always expressed herself in kind terms about him. It was not understood between said Skinner and myself that I was to have any interest in said house. The mere intimation is a base falsehood. He was not often at my house while he was in Savannah, nor did he ever meet Mrs. Tefft here at my house, but came with her once or twice. I took no interest in the affairs of Mr. Skinner or Mrs. Tefft.

5th. To the fifth cross-interrogatory, the witness answers: The papers alluded to were never in my possession.

332 6th. To the sixth cross-interrogatory, the witness answers: I know nothing further.

M. J. ROSS.

Answered, sworn to and subscribed before the undersigned commissioners at Savannah, Georgia, this 17th day of Oct., 1874.

B. A. DENMARK, *Com'r.* [L. S.]
G. A. HOWELL, *Com'r.* [L. S.]

Testimony of Miss Margaret B. Hunter.

Interrogatories propounded to Miss Margaret B. Hunter, a material witness on behalf of D. S. Skinner.

1. Do you know the parties in the above entitled cause, and how long have you known them?

2. Did you or not know the late Israel K. Tefft and Mrs. Penelope Tefft, his wife, and their sons Henry, William, and Charles, all of Savannah, and now deceased? If yea, how long did you know them
333 and with what degree of intimacy?

3d. Do you or not know the house in Savannah, at the southwest corner of Bull and Jones streets, the residence of the late Mr. and Mrs. I. K. Tefft for many years? If yea, state whether or not you ever had any conversation with Mrs. Tefft with reference to her rights and interest in that property; if yea, what was it; when and where? Was or was not Mrs. Sarah S. Walden, the complainant in this suit, then the widow of William P. Tefft, present at such conversation? If yea, what had she to say upon the subject of it?

4th. What were the circumstances of William P. Tefft from 1849 to the time of his death? What business was he engaged in, and with what success?

5th. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this

your examination, or the matters in question in this cause? If yea, set forth the same fully at large in your answer.

JACKSON, LAWTON & BASINGER,
Sol'rs for D. S. Skinner.

334 *Testimony of Miss Margaret B. Hunter.*

1st. To the first interrogatory, the witness answering saith: I am acquainted with Mrs. Sarah S. Walden, the complainant, and with Darius S. Skinner, the defendant in the above entitled suit, and have known them for twenty years and upwards.

2d. To the second interrogatory, the witness answering saith: I was acquainted with the late Israel K. Tefft and Mrs. Penelope Tefft, his wife, and with their sons Henry, Williams, and Charles, and knew them intimately from my girlhood. I was a schoolmate of the sons, and was often at the residence of Mr. I. K. Tefft as a welcome visitor and friend. This intimacy continued until my removal from Savannah in 1854, and since that time whenever I have visited my old home I have always been received at the residence of Mr. and Mrs. I. K. Tefft with great cordiality and marked friendship.

335 3d. To the third interrogatory the witness answering saith: I do know the dwelling-house at the southwest corner of Bull and Jones streets in the city of Savannah, late the residence of Mr. and Mrs. Israel K. Tefft, and have known it since its construction. In answer to the rest of this interrogatory I will state that some time about the year 1854, a year or two after the death of William Tefft, I being at the time on a visit to Mr. and Mrs. I. K. Tefft and in their house at the corner of Bull and Jones streets in Savannah, Georgia, Mrs. Walden, the complainant in this suit (then being Mrs. William Tefft), being present, Mrs. Penelope Tefft read to us a paper which she called her will. In and by that paper (or will, as Mrs. Tefft the elder called it) she, Mrs. Penelope Tefft, had divided her property and its proceeds equally between myself, the complainant in this suit (then Mrs. William Tefft), and her nephew, Darius S. Skinner, one of the defendants in this suit, with the exception that she had by the terms of that will given me some few shares of bank stock, which made my interest under that will to that extent larger than the interest of either of the other two parties named

336 as legatees. When Mrs. William Tefft (now Mrs. Walden and the complainant in this suit) heard that paper or will read by Mrs. Penelope Tefft at the time and manner above stated, she grew very angry and remonstrated in an angry manner with Mrs. Penelope Tefft, because she intended by the paper or will which she had just read to give to me a larger share of her property than she proposed to give to her. Mrs. Penelope Tefft in this conversation stated to complainant and myself that she was then worth between thirty and forty thousand dollars, including her house in which she was then living. During this conversation the complainant, although remonstrating with Mrs. Penelope Tefft about leaving me more property under her will than she did to her, asserted no claim whatever to the house at the southwest corner of Bull and Jones streets in the city of Savannah, in which we then were, and in which Mr. I. K. Tefft and Mrs. Penelope Tefft were then residing. This is the only conversation of which I have any recollection.

4th. To the fourth interrogatory the witness answering saith: I know nothing of my own knowledge of the matters and things inquired of in this interrogatory.

337 5th. To the fifth interrogatory the witness answering saith: I know nothing further.

M. B. HUNTER.

Answered, reduced to writing, sworn to, and subscribed by the witness in our presence this first day of October, A. D. 1874.

CHARLES C. JONES, JR., [L. S.]
Com'r.
CHAS. E. WHITEHEAD, [L. S.]
Com'r.

Testimony of William S. Basinger.

Interrogatories propounded to William S. Basinger, a material witness for D. S. Skinner.

1st. What acquaintance had you with the late Mrs. Penelope W. Tefft, of Savannah, during her lifetime? Do you or not know the house and lot at the corner of Bull and Jones streets, in Savannah, where Mrs. Tefft resided at the time of her death? State whether or not she asserted during her life any claim to that property; and, if so, of what nature was it?

338 2nd. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JACKSON, LAWTON & BASINGER,
Sol'rs for Skinner.

Cross interrogatories.

1. If you state that you knew of Mrs. Tefft's asserting a claim to the house and lot on corner Jones & Bull streets in Savannah, state if you did not gain your information from her as an attorney when employed to draw up a certain deed and will making over said property to D. S. Skinner? Where were said papers drawn up? Was it not at the house of Andrew M. Ross in Savannah? Did you ever talk with Mrs. Tefft about these papers at her own house until after they were drawn? Was not Mrs. Tefft greatly under the influence of Mr. A. M. Ross at the time she requested these papers to be drawn up? Did not Mr. Skin-

339 ner come to see you and tell you that Mrs. Tefft desired you to draw up those papers, and did you not afterwards tell Mrs. Walden that when Mr. Skinner told you of Mrs. Tefft's desire, you could not believe that Mrs. Tefft was in her right mind to make such a request, and was not this statement to Mrs. Walden made in the presence of Miss Georgia Thompson?

2d. After the said deed and will were drawn up and signed, in whose custody were they placed, and how came them to be so placed in the keeping of said Ross?

3d. State all else for benefit of the complainant that you know of.

B. H. HILL & SON,
HENRY B. TOMPKINS,
Sol'rs for Complainant.

Testimony of William S. Basinger.

1st. To the first direct interrogatory the witness, answering, saith: Without any intimacy with Mrs. Tefft, I knew her for many years. I know the house and lot referred to; remember when it was built.
340 I know of two occasions when Mrs. Tefft asserted title in the most direct manner to that property. The first was in 1866. In February of that year Mrs. Tefft sent for me to draw a will for her; I did so, and it was executed on February 24th, 1866. I have that identical will now in my possession, with only Mrs. Tefft's signature cut off, and attach it to my answer. It is in my handwriting and was drawn in accordance with her instructions. Her chief desire, as expressed to me, was to give the bulk of the property to her nephew, Darius S. Skinner; but she was in doubt, for a time, whether she would give him the house and lot, or direct all her property without any exceptions to be sold and the bulk of the proceeds paid to him; she finally decided upon the latter course. I do not remember for what reasons, but she was very fixed in her purpose to give him the most of what she had, and did not utter a syllable which could excite a suspicion that she had any doubt that she was sole owner of the property, or considered that any other person had any interest in it whatever. Mr. A. M. Ross and myself were named executors of this will. I received it from her after
341 she had signed it, sealed it up, and by her direction handed it to Mr. Ross for safe-keeping.

The second occasion upon which I knew Mrs. Tefft to assert sole title to the house and lot was in September, 1872. One day in the latter part of that month Mr. Skinner, whom I had never before seen, came to my office with a message from Mrs. Tefft that she wished to make some changes in her will. I told Mr. Skinner that I could not tell to what extent it would be necessary to change the will without seeing it again, as I had by that time forgotten most of its details, and furthermore that I preferred to see Mrs. Tefft and receive my instructions from herself, so as to be sure of understanding exactly what she wanted. He came back in an hour or two and said Mrs. Tefft would see me at a specified time at the residence of Mr. A. M. Ross. I met her there as she had appointed, she apologized for not receiving me at her own house, on the ground that Mrs. Walden was there, adding "I am afraid of that woman"; she then went on to explain what she wanted to do with her property, recapitulating the contents of the old will, and stating how she wished to change it. I did not trust her memory and told her so,
342 asking where the will was. She reminded me that Mr. Ross had it, and called for him to produce it. He handed it to me sealed as I had given it to him in an envelope directed to himself and myself in my own handwriting. On reading it I found Mrs. Tefft's remembrance of its contents exact in all particulars. She had changed her mind about having the house and lot sold, and now wished to give them to Mr. Skinner in kind; and furthermore wished to do it in such a way that his interest in it should commence at once and be irrevocable, and be wholly independent of any will she might afterwards make. I told her she was not rich enough to do that, that she could not tell what might occur to cause her to change her mind, and that I thought it imprudent in her to give up her control over the title in that way. To which she replied, yes, it would be imprudent under ordinary circumstances; but that Mr. Skinner was her nearest living relation, and would be entitled to whatever she had if she should die without a will; that it had been her fixed intention for many years to give him this property, and that she wished

to do it in that way, for the very purpose of putting it out of her power to recall it, because she felt herself growing feeble with age, and
343 feared she might be induced, in some weak moment, to dispose of the property otherwise; that all she wanted was the use and control of the property during the remainder of her life, which could not but be short, with a perfect assurance that her nephew would have it when she died. I do not of course undertake to give her exact words, but I do undertake to give the substance of what she said. She expressed herself with clearness and precision; and there was no doubt at all as to what she wanted to do. I explained to her how it was that a will would not accomplish her purpose, and that she could only do it by means of a deed. After settling the general tenor of the deed, she took up the subject of the will, and gave me very explicit instructions with regard to it, which were carried out. I appointed a day to see her again with the papers ready for her inspection, and did see her accordingly at her own house. The deed and will were read to her; the former she approved; in the latter she required an alteration. She told me she had recently found reason to think that Mrs. Walden pretended to some claim against the estate of the late I. K. Tefft, her husband, or against the house, she did not understand which nor did
344 she understand what the claim was; but though smiling at the idea of any such claim, she inferred that Mrs. Walden would endeavor to make some trouble for Skinner after her death, and she wished to do what she could to prevent it; she, therefore, directed a clause to be inserted in the will making the bequest to Mrs. Walden conditional upon her abandonment of all claims she might suppose herself to have. I took the papers away, drew the will over again with the desired change, and called on her at her own house, at another time, when both deed and will were duly executed. A copy of each is appended to the bill of complaint in this case. The will was sealed up and handed to Mr. Ross as the previous one had been, he and I again being named as executors. The deed was delivered to Mr. Skinner. These were the only occasions on which I ever heard Mrs. Tefft say anything about her house and lot; and certainly no one would have supposed from anything that passed that there was any doubt at all about the exclusiveness of her title. So far as Mrs. Walden's claim was concerned, the little she said about it indicated that it was a claim for money; and it never occurred to me until after Mrs. Tefft's death that it was anything in the nature of a claim of title.

345 To the second direct interrogatory, the witness, answering, says: Not long after the execution of the deed and last will above referred to, a lady accosted me on the street one day, whom I did not recognize until she told me she was Mrs. Walden; she upbraided me quite sharply for having drawn that will for Mrs. Tefft. I cannot certainly recollect what was said; but it was in effect that Mrs. Tefft was not herself when she made the will, and that I told her she was entirely mistaken, that no respectable counsel would be a party to the making of a will by a person not in the possession of his faculties; that as soon as I had discovered that she and Mr. Skinner were enemies, as I knew nothing about his character, I had suspected them both of unduly urging Mrs. Tefft with their solicitations, and determined to assure myself by an interview with her that Mrs. Tefft was acting freely; that I had so assured myself, and that Mrs. Tefft knew what she was doing as well as I did myself; at all events, Mrs. Walden said not a word of any claims of hers to the property. Her anger seemed to be caused by the fact of its having been given to Skinner. Some time after that

346 conversation, and it so happens that I can give the exact date, it was on the afternoon of Saturday, the 5th of April, 1873, I called on Mrs. Tefft, at her request, to receive my fee for my professional services in the matter of the will and deed, and I think, also, to receive some papers of hers. I saw her in her bed-room, not sick, but sitting there, for convenience, apparently. Mrs. Walden was in the room, and the servant girl who had shown me up. After disposing of our business, I sat talking with the old lady a half hour, perhaps, on general topics. As I rose to leave, Mrs. Walden wanted a receipt for the money paid me, but could not find writing-materials. I suggested that I could send a receipt, but that would not do; so she went down stairs with me and asked me into the library; pen and ink were found, and the receipt written; when Mrs. Walden invited me to sit, and immediately began to tell me about Mrs. Tefft' imbecility; said that her memory was very greatly impaired; that she had been for more than a year without any mind of her own, or unable to attend to business or to take care of herself; with more to the same effect. I thought this
347 rather strong, considering that Mrs. Tefft had not five minutes before been talking with me in her presence with perfect intelligence on several topics of interest to both of us, and that only six months before she had been exhibiting to me a better memory than my own, and attending to business of great importance and interest to herself. And supposing that Mrs. Walden was about to take up again that subject of the will, I replied at once that I had seen no evidence whatever of the imbecility she had mentioned; that I had seen very decided and satisfactory evidence of the contrary, and that there was certainly no such thing when the will was made. But Mrs. Walden did not on this occasion, any more than before, make any allusion whatever to any claim of hers to any of the property. When Mr. Skinner came to Savannah after his aunt's death, he informed me that Mrs. Walden would not give up the house, and that D. A. O'Byrne, esq., was her counsel. I went to Mr. O'Byrne to inquire what the difficulty was, in the hope of avoiding a controversy for which I could see no reason. I got nothing from him whatever, but an assurance that Mrs. Walden would not quit; whereupon Mr. Skinner made an affidavit against her as an intruder, under our State law; she replied with
348 a counter-affidavit, filed by Mr. O'Byrne for her, that she claimed title bona fide. I then proposed to Mr. O'Byrne to disclose the nature of her claim, having Mr. Skinner's authority to say that if it was a good one he would recognize it, Mr. Skinner's impression then being, as he said, that she had probably made some arrangement with Mrs. Tefft for the occupation of the house for a time which had not expired at Mrs. Tefft's death; but Mr. O'Byrne put an end to all overtures of that kind by flatly refusing to give any information on the subject, or even to say what his client claimed. And as a speedy recovery of possession was prevented by the counter-affidavit, Skinner's action of ejectment was commenced in the U. S. circuit court. It was not until some proceedings were set on foot in the court of ordinary in this county by Mrs. Walden's present solicitor, that I as Skinner's counsel, was ever fully informed that she actually claimed the property as her own.

349 1st. To the first cross-interrogatory, the witness, answering, saith: I have fully answered how I came to know of Mrs. Tefft's asserting her right to the house and lot mentioned. The deed and will were drawn in my office. The first instructions were received from Mrs. Tefft at Mr. Ross' house. I have explained that I had altogether three

interviews with Mrs. Tefft, the first at Mr. Ross' house, the others at her own. At the second interview (the first at her own house) the papers were revised and her final instructions given. I never knew or heard, and the appearance of the question I am now answering among the cross-interrogatories is the first intimation I have ever had, that Mrs. Tefft was ever under Mr. Ross' influence at any time. Mr. Ross and Mr. I. K. Tefft were for many years brother officers in the Bank of the State of Georgia. Mr. Tefft was cashier and Mr. Ross was a bookkeeper, and they necessarily saw a great deal of each other. I had many opportunites to observe that very good relations existed between them, which were continued with Mrs. Tefft after her husband's death, as is demonstrated by her naming him as one of her executors in two wills,
350 made more than six years apart, as I have mentioned. Certainly I never perceived any indications of any influence exercised by him over her. Indeed I am a little surprised to find it suggested that any one had any special influence over her in the sense in which that phrase is ordinarily used; for she always seemed to me to have quite a will of her own, tho' ready to seek and perhaps to take advice from friends in whom she had confidence. I have related the history of Mr. Skinner's call upon me with Mrs. Tefft's message that she wished me to make a change in her will. I never told Mrs. Walden any such thing as is suggested in the last clause of this cross-interrogatory. On the contrary, knowing as I did, from the circumstances already explained, that it was Mrs. Tefft's long-settled purpose to give the principal part of her property to Mr. Skinner, there was nothing at all surprising to me in his statement of the change she wanted to make. I think I have stated with sufficient fulness the substance of Mr. Skinner's first conversation with me and what I afterwards said to Mrs. Walden about it. But in order to answer this question completely, I will go a little
351 more into details. Mr. Skinner was a stanger to me. I had never seen him before and knew nothing about him, except that he was Mr. Tefft's nephew. He explained to me in a general way what his aunt's wishes were. He told me she had sent for him to come to see her about this business, because Mrs. Walden was trying to get her to give the property to her and she wished to put an effectual stop to all such attempts, which statement was afterwards confirmed by Mrs. Tefft. I gathered from the conversation, for he did not say so in direct terms, that he and Mrs. Walden were not on good terms, and a suspicion arose in my mind that they were both scheming, he to persuade Mrs. Tefft to do more for him than she really wished and Mrs. Walden to get herself preferred to him. I distrusted them both and determined at once to satisfy myself by an interview with Mrs. Tefft that she was having fair play and doing her own pleasure in the matter, and that I would draw no papers at all for her except upon her personal request and under her personal instructions. I took that position, not only through my respect and regard for Mrs. Tefft, but because
352 it was an obvious professional duty under the circumstances. There was no occasion to tell Mr. Skinner then that I had any distrust of him; it was enough for him that I wanted to see his aunt myself. When I did see her my distrust of him was entirely dispelled. I told him of it later; and this was what I told Mrs. Walden, as I have already substantially stated, and so told her in response to her own suggestion that Mrs. Tefft had not been in her right mind when she made the will, a suggestion which I confess somewhat irritated me, as I knew it to be utterly untrue. It was the first time that I had ever heard from any one the least hint that Mrs. Tefft's mind had been im-

paired, and I have never heard of it since as emanating from any other than Mrs. Walden herself. I repeat that I never said to Mrs. Walden that "when Mr. Skinner told me of Mrs. Tefft's wishes, I could not believe she was in her right mind," either alone or in the presence of Miss Thompson or any other person. I have no recollection of having seen Miss Thompson since she was a child—certainly not since the war. I regret to say I would not know her if I were to see her, and have not the least idea what she is like. As to Mrs. Walden herself, I never was in company with her or spoke to her in my life, so far
353 as I now remember, except on the two occasions mentioned—once when she stopped me on the street, and then each of us was walking alone, and once in Mrs. Tefft's bed room, when no one else was present but Mrs. Tefft and a servant girl.

2nd. To the second cross-interrogatory, the witness, answering, saith: When executed, the will was put in an envelope and handed to Mr. Ross for safe-keeping, as he was to be one of the executors; it is very customary to dispose of wills in that way. Mrs. Tefft had so directed when she made the will in 1866. I do not remember whether she did so, or I suggested it when the will of 1872 was made; at all events, that was what was done with it, and that was the reason. Mr. Ross never had the deed at all. Mr. Skinner left it with me to be recorded. When that was done, I sent it to him, at Providence, Rhode Island. When I wanted it, after the litigation had commenced, I wrote to him for it. He sent it to me, and it has been in my possession ever since.

3d. To the third cross-interrogatory, the witness, answering,
354 saith: I know nothing more that will benefit either party.

WM. S. BASINGER.

Answered, subscribed, and sworn to before us, the undersigned commissioners, acting by virtue of the annexed commission, at Savannah, Ga., this eight day of October, A. D. 1874.

G. A. HOWELL, *Com'r.* [L. S.]
B. A. DENMARK, *Com'r.* [L. S.]

Copy of will annexed to foregoing deposition.

STATE OF GEORGIA,
County of Chatham:

In the name of God, amen. I, Penelope W. Tefft, of the city of Savannah, county and State aforesaid, being of sound and disposing mind and memory, do make and publish this my last will and testament, hereby expressly revoking and making null and void all former last wills and testaments heretofore by me at any time made.

1. First. I direct my executors, hereinafter named, to pay all my just debts and funeral expenses out of my estate as soon as
355 possible after my decease.

2. Second. I direct my said executors, as soon after my decease as they shall think it advisable, to sell all my property, of every kind whatsoever, privately or at public outcry, and at such time or times as they shall think best, hereby giving them full power and authority so to do, and to make and deliver titles therefor, whenever necessary, to the purchaser or purchasers thereof, without the necessity of applying to any court for authority so to do.

3. Third. All my said property having thus been converted into money, I direct the same to be disposed of in the following manner, viz:

I give and bequeath to my friend Margaret B. Hunter, now of New York City, the sum of two thousand dollars.

I give and bequeath to my daughter-in-law Sarah S. Walden the sum of two thousand dollars.

I give and bequeath to Charles Tefft Pritchard, son of Dr. Paul Pritchard, the sum of three hundred dollars, which shall be paid to the said Dr. Paul Pritchard, to be by him held in trust for the said Charles Tefft Pritchard until his arrival at the age of twenty-one years, and then to be paid to the said Charles Tafft Pritchard with the interest which may have accrued thereon, free from any trust.

356 I give and bequeath to my old and faithful servant James Bently Mathews, a colored man, the sum of two hundred dollars.

I give and bequeath all the rest and residue of my said property so converted into money to my nephew, Darius S. Skinner, of Providence, Rhode Island.

4th. Fourth. I hereby nominate and appoint my friends Andrew M. Ross and William S. Basinger, of Savannah aforesaid, to be the executors of this my last will and testament; and declare that, if, for any reason, either of them shall fail to be qualified, the other shall exercise all the power and authority hereinbefore conferred upon both.

In testimony whereof I, the said Penelope W. Tefft, have hereunto set my hand and seal at Savannah, in the county and State aforesaid, this twenty-fourth day of February, one thousand eight hundred and sixty-six.

(The signature of the testamentatrix is cut from will attached to deposition.)

Signed, sealed, published, and declared as and for her last will and testament by the said Penelope W. Tefft, in the presence of us, who, in her presence, and at her request, and in the presence of each
357 other, have subscribed our names as witnesses hereto, at the city of Savannah, county and State aforesaid, this twenty-fourth day of February, A. D. 1866.

A. N. MILLER.
SARAH I. MILLER.
THOMAS W. MCNISH.

Testimony of Robert Erwin.

Interrogatories propounded to Robert Erwin, a material witness for Darius S. Skinner.

1. Do you know the parties, and were you, or not, acquainted with the late Mrs. Penelope W. Tefft, of the city of Savannah, during her life; if yea, how long did you know her?

2. Do you or not know the house and lot at the corner of Bull and Jones streets, in Savannah, designated as number 5, Monterey ward, where Mrs. Tefft resided at the time of her death; if yea, how long have you known it? Do you or not know of any treaty ever having been entered into by Mrs. Tefft during the period of your
358 acquaintance with her for the sale of said house and lot; if *say*, when was it made and with whom; and what were the terms of it? Relate all the particulars and how such treaty terminated. If you say you were the person treating for the house and lot, and that there was an agreement in writing, attach the agreement to your answer if you have it, or state what became of it, and state its contents.

3. If you say there was such a treaty, and that it took place in the city of Savannah, state where Mr. Walden was at that time. Had she any knowledge of such treaty; and if so, how much? Did she, or not, while

such treaty was pending, set up any claim or assert any title to the property?

4. If you have said, in your answer to the first interrogatory, that you know Mrs. Walden, state how long you have known her. Do you or not know of her ever having been an inmate of Mrs. Tefft's house; if so, when, under what circumstances, and for what purpose was she there? What relations existed between herself and Mrs. Tefft, and upon what terms did they stand with each other?

359 5. What other instances can you state of acts of sole ownership exercised by Mrs. Tefft over the property above referred to? If any, state when they occurred, and give the particulars so far as you know them.

6. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or thematters in question in this cause? If yea, set forth the same fully and at large in your answers.

JACKSON, LAWTON & BASINGER,
Sol'rs for Skinner.

Testimony of Robert Erwin.

1. To the first direct interrogatory the witness, answering, saith: I know the plaintiff, but have no acquaintance with Mr. Skinner. I knew Mrs. Penelope W. Tefft well for 20 years.

360 2. To the second direct interrogatory the witness, answering, saith: I know the house and lot mentioned well, having lived opposite to it for about 20 years. Have known for that long a time. In the month of August, 1865, I treated with Mrs. Tefft for the purchase of the property in question—she agreeing to receive and I to pay the sum of $20,000—agreement made under a mutual forfeiture of $5,000 each. The agreement was in writing and signed in the presence of 2 witnesses; 2 copies were taken, one for Mrs. Tefft and one for me. Mrs. Tefft, by the terms of this agreement, was to deliver at a certain period, within a few months after the date of the agreement, the house and lot to me; she asked, however, to be released from her agreement and from her forfeiture, and in accordance with her request I released her from both agreement and forfeiture. My memory in reference to this entire transaction has been refreshed by the exhibition to me, by Mrs. Walden, within the past 3 or 4 months, of the late Mrs. Tefft's copy of that agreement. I have not seen that agreement since that time. My copy may possibly be packed away among my old papers, but I cannot find it.

361 3. To the third direct interrogatory the witness answers: At the time of the making of the agreement referred to Mrs. Walden was in that house; I believe she was residing there. Mrs. Walden was fully cognizant of the agreement, so far as I know; she did not while said treaty was pending set up any claim or assert any title to the property; if she did, I have now no recollection of it.

4. To the fourth direct interrogatory the witness answers: I have stated that I knew her for many years. I have certainly known Mrs. Walden for 15 years. I believe Mrs. Walden has been an inmate of that house for a good portion of the 15 years that I have known her, but I do not know under what circumstances she was there or for what purpose. Mrs. Walden was the widow of one of Mrs. Tefft's sons; I don't know upon what terms they stood toward each other.

5. To the fifth direct interrogatory the witness answers: I know nothing more on this point or in answer to this interrogatory than what I have already stated.

362 6. To the sixth direct interrogatory the witness answers: I have stated everything in reference to this matter that I know of my own knowledge.

ROBERT ERWIN.

Answered, subscribed, and sworn to before us this 9th day of October, A. D. 1874.

B. A. DENMARK, *Com'r.* [L. S.]
G. A. HOWELL, *Com'r.* [L. S.]

Testimony of Ann Rose Alexander.

Interrogatories propounded to Ann Rose Alexander, a material witness for the defendant, Darius S. Skinner.

1. Do you know Mrs. Walden, the complainant in the above entitled cause? Did you know Mrs. Penelope W. Tefft in her lifetime? If so, how long did you know her, and how came you to know her?

2. How much has Mrs. Walden been at Mrs. Tefft's house since the war? If you say she was there at all, state when and how many times. How came she to be there? Was it or not on Mrs. Tefft's invita-

363 tion? If not, do you know whether or not it was agreeable to Mrs. Tefft to have her there; and how do you know it? Was she there for the purpose of taking care of Mrs. Tefft?

3. Did you or not ever hear any conversation between Mrs. Tefft and Mrs. Walden about the house where Mrs. Tefft lived? If so, what was it? What did each of them say? What claim, if any, did Mrs. Walden make to the house? What did Mrs. Tefft say she intended to do with the house?

4. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JACKSON, LAWTON & BASINGER,
Sol'rs for D. S. Skinner.

Cross-interrogatories.

1. X. If you say that you know Mrs. Tefft, tell when you first went to her house, what you did there, and how long you remained.

364 Were Mrs. Tefft and Mrs. Walden in the habit of telling you of their affairs; and, if they were, how often did they do so, how came them to do so, and what relation existed between you and them to cause such intimacy?

2. X. Were you not a slave before the war, and were you ever living with Mrs. Tefft until long after the war? If you lived at the house on corner of Jones & Bull st's, how long did you live there, and how came you to quit there? Were you not turned off by Mrs. Walden after Mrs. Tefft's death? If you were turned off by Mrs. Walden, why were you so turned off?

3. X. After Mrs. Tefft's death were you ever told that you had a right

to stay at the house on corner Jones and Bull streets without paying rent; and if so, who told you so?

B. H. HILL & SON,
HENRY B. TOMPKINS,
Sol'rs for Compl't.

Testimony of Ann Rose Alexander.

365 1st. To the first direct interrogatory the witness answers: I know Mrs. Walden, and I knew Mrs. P. W. Tefft in her life time for over twenty years. I first knew her by her visits to the house of the gentleman, Col. Isaac De Lyons, to whom I formerly belonged. For about six years before she died I lived at her house.

2d. To the second direct interrogatory the witness answers: Mrs. Walden has visited Mrs. Tefft twice since the war, to my knowledge. The first time she remained there three or four months; the second time she remained with Mrs. Tefft till she died, having come two or three months before that event. I cannot remember when Mrs. Walden paid the first visit. I don't know how she came the first time, but Mrs. Tefft told me it was not by her invitation. The second time Mrs. Tefft sent for her. Mrs. Tefft said she did not want Mrs. Walden there, but that Miss Thompson persuaded her to send for her. I suppose Mrs. Walden was at Mrs. Tefft's for the purpose of taking care of her, as Mrs. Tefft sent for her the last time.

3. To the third direct interrogatory the witness answers: I have heard conversations between Mrs. Tefft and Mrs. Walden about
366 the house in which Mrs. Tefft lived. Mrs. Walden said that her mother (Mrs. Tefft) ought to give the house to her, but Mrs. Tefft said that she would do no such thing, but intended to give it to her nephew, Darius S. Skinner. Mrs. Walden always said her first husband, Mrs. Tefft's son, had a claim to said house.

4th. To the fourth direct interrogatory the witness answers: I know nothing further that will benefit either party.

1st. To the first cross-interrogatory the witness answers: I first went to the house about six years before Mrs. Tefft died, and for the purpose of living there, and lived there till she died. I washed for Mrs. Tefft and did anything else she wanted done. I waited on her while she was sick before Mrs. Walden went there. Mrs. Tefft and Mrs. Walden were in the habit of telling me of what passed between them. The' did so frequently; I don't know how often. I know of no reason why they told me unless it was because I was there.

367 2. To the second cross-interrogatory the witness answers: I was a slave before the war, went to Mrs. Tefft's soon after the war. I lived but a few months at the house Mrs. Tefft let me have, having lived there about six years before her death, as already stated. I quit because I was turned off by Mrs. Walden, who said she did not want me there.

3d. To the 3d cross-interrogatory the witness answers: No one ever told me that I had a right to stay at the house on the corner of Jones and Bull streets without paying rent.

A. R. ALEXANDER.

Answered, sworn to, and subscribed before us, at Savannah, Ga., on this 29th day of October, A. D. 1874.

G. A. HOWELL, *Com'r.* [L. S.]
B. A. DENMARK, *Com'r.* [L. S.

Testimony of Edward C. Matthews and James B. Matthews.

368 Interrogatories propounded to Edward C. Matthews and James B. Matthews, material witnesses for defendant, E. S. Skinner.

1. Do you know the parties in the above-entitled cause?

2. Had you or not any acquaintance with Israel K. Tefft, Mrs. Penelope W. Tefft, his wife, and their sons, Henry, William, and Charles, all now deceased? If so, how came you to know them, and how well did you know them?

3. What acquaintance have you with Mrs. Sarah S. Walden, the complainant in this suit, and how long have you known her?

4. What business was William P. Tefft engaged in from 1849 to the time of his death, and what success had he in it?

5. What do you know of the relations existing between Mrs. Walden and the late Mr. and Mrs. I. K. Tefft during the life of the latter? Do you know whether or not Mrs. Walden ever stayed at their house; if so, when, how long, and for what terms?

369 6. Do you or not know the house at the corner of Bull and Jones streets, in Savannah, where Mr. and Mrs. Tefft lived for many years? If you do, who occupied and controlled it after the death of Mr. Tefft? If you say Mrs. Tefft did, state whether or not she so occupied and controlled it as her own property or on behalf of some one else? What have you heard Mrs. Tefft say about her rights and interests in said property?

7. Did you or not ever hear Mrs. Walden set up any claim to the said house and lot as her property?

8. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

JACKSON, LAWTON & BASINGER,
Sol'rs for Skinner.

Cross interrogatories.

370 1. How old are each of you, and how old were you and where did you reside in the year 1849? Were you not the slaves of I. K Tefft or of some of his family; and, if so, when did you become so and where?

2. Did you ever know anything of the Tefft family before 1849, and what means did you have of acquiring information of the business and success of Wm. P. Tefft in his commercial relations?

3. What means had you of knowing of the relations existing between Mrs. Walden and Mrs. Tefft during the life of the latter? Did not Mrs. Tefft send for Mrs. Walden to come out and take care of her in the summer of 1872? And was not Mrs. Tefft in a very deplorable and uncomfortable condition when Mrs. Walden came? What were you engaged in doing about the time Mrs. Walden came, and where was Mr. D. S. Skinner about that time?

4. Did you not correspond with Mr. Skinner, and did you not know of Mr. Skinner being written or telegraphed to to come out here and look after getting Mrs. Tefft to make over the house on lot 5, Monterey ward, on corner Jones and Bull streets, in Savannah, to him?

371 Was not one Mr. Andrew M. Ross very active in getting Mr. Skinner to come out for that purpose? And was not Mr. Ross

continually going to Mrs. Tefft's house and getting her to go to his house? Have you not talked with Mr. Ross and Mr. Skinner about this property, and was it not often discussed as to how Mrs. Tefft should be induced to make over the property to Mr. Skinner?

5. Were you not a good deal with Mrs. Tefft before Mrs. Walden came out to take care of her, and was she not very much addicted to strong drink, and did not Mr. Ross often have her at his house and allow or induce her to indulge this appetite? Did not Mrs. Tefft frequently grow violent and abusive, and did she not often abuse Mr. Skinner and others? How often have you talked with Mr. Skinner about this case, and what has been said between you about it?

6. If you say you ever heard Mrs. Tefft speak of the house and lot on corner Jones and Bull streets, state fully and particularly when, where, and on how many occasions you heard her so speak, and all that she said. Was she not often in a condition in which she spoke at
372 random and foolishly about her property and herself? Did she always know what she was saying and doing, and was she not greatly under the influence of Mr. A. B. Ross?

7. State all else you know of that will be of benefit for the compl'nt.

B. H. HILL AND SON,
HENRY B. TOMPKINS,
Sol'rs for Compl'nt.

Testimony of Edward C. Matthews.

1st. To the first direct interrogatory the witness, answering, saith: I know the parties.

2d. To the second direct interrogatory the witness answers: I knew Mr. and Mrs. Tefft and their son Charles. I was too young to remember William and Henry. I belonged to Mrs. Tefft and was born her servant. I knew them, Mr. and Mrs. Tefft and their son Charle-, well, for I was a servant in their house before, during, and after the war; I remained with Mrs. Tefft till her death.

373 3d. To the third direct interrogatory the witness answers: I know Mrs. Walden well, and have known her for about fifteen years.

4th. To the fourth direct interrogatory the witness answers: I know nothing of the matters referred to in this interrogatory.

5th. To the fifth direct interrogatory the witness answers: Mrs. Walden was originally the wife of William P. Tefft and daughter-in-law of Mr. and Mrs. I. K. Tefft, as I have always understood. Before the death of Mr. and Mrs. I. K. Tefft, Mrs. Walden, while staying with them, married Mr. Chas. C. Walden. Mrs. Walden was with Mr. and Mrs. I. K. Tefft contin'ously for years before she married Mr. Walden. After her marriage with him she left, and after Mr. Walden's death she visited Mrs. Tefft two or three times a year and remained with her a few weeks at a time. For two or three years prior to Mrs. Tefft's death Mrs. Walden only visited her once or twice a year; the last year of Mrs.
374 Tefft's life Mrs. Walden visited her three or four times.

6th. To the sixth direct interrogatory the witness answers: I know the house mentioned. Mrs. Tefft occupied and controlled said house after the death of Mr. Tefft, her husband. She occupied and controlled it in her own right, and frequently told me that Mr. I. K. Tefft built it for her.

7th. To the seventh direct interrogatory the witness answers: I never heard Mrs. Walden set up any claim to said house and lot as her prop-

erty. Have heard her say she thought her ma ought to give it to her, but she would not, as she had given it to Mr. Skinner.

8th. To the eighth direct interrogatory the witness answers: Mrs. Tefft told me time and again, up to her death, that Mrs. Walden had received all she was entitled to receive from her, with the exception of the household goods, carpets, furniture, &c., in said house which she intended to give Mrs. Walden. But the said house and lot she in-
375 tended for Darius Skinner and no one else, and that Jimmie and "Scrappy," meaning my brother and myself, would be provided for through Mr. Skinner.

1st X. To the first cross-interrogatory the witness answers: I am 27 years old and some months. In 1849 I was three years old and too young to know where I then resided. I was born the slave of Mr. and Mrs. I. K. Tefft, and continued such till I was made free.

2d X. To the second cross-interrogatory the witness answers: I was too young to know anything about the Tefft family prior to 1849. William P. Tefft died, as I have been informed, before I could remember.

3d X. To the third cross-interrogatory the witness answers: I was constantly with Mrs. Tefft and Mrs. Walden, and from this fact
376 know that they were off and on with each other, sometimes friendly and sometimes unfriendly; Mrs. Tefft said that Mrs. Walden worried and troubled her. I presume that I should have stated these relations in my answer to the fifth direct interrogatory. Mrs. Tefft did not send for Mrs. Walden in the summer of 1872 that I know of; Mrs. Tefft told me after Mrs. Walden came that she did not send for her and that she, Mrs. Walden, had only come to harass and worry her to death. Mrs. Tefft was not in a deplorable and uncomfortable condition when Mrs. Walden came. On the contrary she was well cared for and had every attention needed. Three good servants, two females and myself, waited on her, and she got all she needed. About the time Mrs. Walden came I was knocking round waiting on Mrs. Tefft and also getting jobs out, but slept at Mrs. Tefft's every night at her request. I do not know where Mr. Skinner was at that time.

4th X. To the fourth cross-interrogatory the witness answers: I did not correspond with Mr. Skinner, nor do I know of any telegram or letter being sent to him in reference to his interest in said prop-
377 erty. I do not know whether said Ross was active in getting Mr. Skinner to come out here to see about said property, but Mrs. Tefft desired Mr. Ross to write to Mr. Skinner to come and intercede for the property, as she did not expect to live long, and she wished Mr. Skinner to look after the property she had made over to him. Mr. Skinner did come out, and he saw Mrs. Tefft about said property in my presence. Mr. Ross sometimes went to Mrs. Tefft's house and spoke with her from his buggy, but never got out. He never got Mrs. Tefft to go to his house to my knowledge. I have talked to Mr. Ross and Mr. Skinner about this property, but never as to how Mrs. Tefft should be induced to give it to Mr. Shinner. She had always expressed herself freely to me, and said that it was her intention to give it to Mr. Skinner and no one else.

5th X. To the fifth cross-interrogatory the witness answers: I was very contin'ously with Mrs. Tefft as already stated; she was not addicted to strong drink, and Mr. Ross never had her at his house nor tried to induce her to take strong drink of any kind. Mrs. Tefft was
378 never violent or abusive except to Mrs. Walden, and was never violent or abusive to Mr. Skinner; she always spoke highly of him. I have talked to Mr. Skinner some four or five times about this case.

He asked me whether or not it was his aunt's desire to give him said property, and I told him she had so expressed herself to me repeatedly in his presence and in her room.

6th X. To the sixth cross-interrogatory the witness answers: I have already stated that I have heard Mrs. Tefft speak repeatedly and frequently of said house and lot; she said the house and lot were hers and that she intended to give them to Mr. Darius Skinner, and to give the furniture, &c., to Mrs. Walden, which was more than Mrs. Walden ought to have; she never spoke at random or foolishly about her property or herself. She always knew what she was saying and doing, and was not under the influence of said Ross or any one else, but always did to suit herself.

7th X. To the seventh cross-interrogatory the witness answers:
379 I know nothing further of benefit to complainant.

EDWARD C. MATTHEWS.

Answered, sworn to, and subscribed before us, at Savannah, Georgia, this 20th day of October, 1874.

G. A. HOWELL, *Com'r.* [L. S.]
R. A. DENMARK, *Com'r.* [L. S.]

Testimony of James B. Matthews.

1st. To the first direct interrogatory the witness answers: I know the parties.

2d. To the second direct interrogatory the witness answers: I knew all the parties mentioned well and intimately; was born the slave of Mr. I. K. Tefft, and was raised by him and his family.

3d. To the third direct interrogatory the witness answers: I have known Mrs. Walden from the time of the birth of her first child.
380 She was at that time the wife of William P. Tefft. I do not remember when her first child was born. I know her well.

4th. To the fourth direct interrogatory the witness answers: I know William P. Tefft was at one time engaged in the commission business in Savannah; don't know the time, nor with what success he managed.

5th. To the fifth direct interrogatory the witness answers: Mrs. Walden was originally the daughter-in-law of Mr. and Mrs. I. K. Tefft, but before the death of either she married Mr. Walden. Mrs. Walden resided with Mr. and Mrs. Tefft for a while, don't know how long, before her husband, William P. Tefft, died. She resided with them off and on after his death till she married Mr. Walden. After Mr. Walden's death she resided there with them off and on. The length of time she resided with them I don't remember.

6th. To the sixth direct interrogatory the witness answers: I
381 know the house mentioned; Mrs. Tefft occupied and controlled it as her own property after the death of Mr. Tefft. I have heard Mrs. Tefft say it was her own property and belonged to no one else, repeatedly.

7th. To the seventh direct interrogatory the witness answers: I never did hear Mrs. Walden set up any claim to said house and lot.

8th. To the eighth direct interrogatory the witness answers: I was attending to business for Mrs. I. K. Tefft, and she frequently requested me to write to Mr. Skinner and tell him that Mrs. Walden was troubling her, and keeping her from exercising control over her own property; that she wanted him, Mr. Skinner, to come here and take charge of said property, which she had always intended to give and leave to him.

1st X. To the first cross the witness answers: I am 33 years
382 old, and in 1849 resided on St. Julian street, in Savannah. I was born the slave of I. K. Tefft, in Savannah, Georgia.

2d X. To the second cross-interrogatory the witness answers: I have already stated that I was raised by the Tefft family, and was born a slave therein. I know nothing of the business success of William P. Tefft.

3d X. To the third cross-interrogatory the witness answers: I lived with Mrs. Tefft after Mr. Tefft's death till about four months prior to her death. Mrs. Tefft did not send for Mrs. Walden to come out and take care of her in the summer of 1872, to my knowledge. Mrs. Tefft was not in a very deplorable and uncomfortable condition when Mrs. Walden came. She had all the care taken of her in the world. About the time Mrs. Walden came, if in 1872, I was crier of the United States court. I don't know where Mr. Skinner was at that time; rather think he was here.

4th X. To the fourth cross interrogatory the witness answers:
383 I did correspond with Mr. Skinner, by request of Mrs. Tefft, to come out here to her. I wrote him, for her, to come and take charge of said house. I did not write anything about getting Mrs. Tefft to make over the property to him. I don't know that Mr. Andrew Ross ever tried to get Mr. Skinner to come out here for any purpose. Mr. Ross and Mrs. Tefft did not interchange visits often, to my knowledge. I never talked with Mr. Ross or Mr. Skinner about this property before Mrs. Tefft's death. Have talked with Mr. Skinner since her death.

5th X. To the fifth cross-interrogatory the witness answers: I was with Mrs. Tefft a great deal before Mrs. Walden came out; she was not addicted to strong drink that I am aware of; I know knothing about Mr. Ross inducing or allowing Mrs. Tefft to take strong drink; Mrs. Tefft never grew violent and abusive that I know of, to Mr. Skinner or any one else. I have talked several times with Mr. Skinner since Mrs. Tefft's death about this case in a general way.

6th X. To the sixth cross-interrogatory the witness answers:
384 Mrs. Tefft has frequently and at various times in Savannah talked to me about this property; said she intended the house for Mr. Skinner and the furniture in it for Mrs. Walden and nobody else. She never spoke foolishly or at random about the property or herself that I know of, and always appeared to know what she was saying and doing; she was not under the influence of Mr. Ross that I am aware of.

7th X. To the seventh cross-interrogatory the witness answers: I know nothing further.

JAMES B. MATTHEWS.

Answered, subscribed, and sworn to before us this 30th day of October, A. D. 1874.

B. A. DENMARK, *Com'r.* [L. S.]
G. A. HOWELL, *Com'r.* [L. S.]

Testimony of Edward F. Neufville and James Hunter.

Interrogatories propounded to Edward F. Neufville and James Hunter, material witnesses for Darius S. Skinner.

385 1st. Do you or not know the house and lot in Savannah, known as No. 5, Monterey ward, which was the residence of the late Mrs. Penelope W. Tefft; if so, what has been its yearly value for rent since the 11th day of September, 1873?

2d. What is your occupation and what opportunities have you had

since the time above mentioned for knowing the value for rent of property of that kind in the city of Savannah?

3d. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

JACKSON, LAWTON & BASINGER,
Sol'rs for D. S. Skinner.

Cross-interrogatories.

386 1. X. Do you know what the house on corner Jones and Bull streets has ever rented for? Have not rents greatly depreciated in Savannah in the past few years, and do not houses that have rented for from $1,400 to $1,500 per annum since 1867 now rent for from $800 to $1,000? Do you know the condition of said house? What is the condition of the upper story? Are there any fireplaces or water in that story?

2. X. State all else you may know of that will be of benefit for the compl't.

B. F. HILL & SON,
HENRY B. TOMPKINS,
Sol'rs for Compl't.

Testimony of James Hunter.

1. To the first direct interrogatory the witness answering saith: I know the house mentioned; I do not know of my own knowledge the yearly rental since the 11th of September, 1873, but judging from its location it ought to have commanded between ($1,300) thirteen hundred and fifteen hundred dollars if in good repair.

387 2d. To the second direct interrogatory the witness answering saith: I am a financial broker; from the nature of my business I receive indirectly information in reference to the rental of such property.

3d. To the third direct interrogatory the witness answering saith: I know nothing further of benefit to either party.

1st X. To the first cross-interrogatory the witness answering saith: I do not know for what the house in question was ever rented. Since 1872 rents in Savannah have depreciated considerably—about twenty per cent. The locality has much to do with determining the depreciation. Houses that rented since 1867 for $1,400 to $1,500 now rent for from $1,100 to $1,200. I do not know the condition of the house mentioned nor anything about the upper story.

2d X. To the second cross-interrogatory the witness answering saith: I know nothing further beneficial to either party.

JAMES HUNTER.

388 Answered, subscribed, and sworn to before us at Savannah, Georgia, on the 8th of October, 1874.

G. A. HOWELL, *Com'r.* [L. S.]
B. A. DENMARK, *Com'r.* [L. S.]

Testimony of Edward F. Neufville.

1st. To the first direct interrogatory the witness answering saith: I know the house and lot mentioned. Had it been offered for rent in the

fall of 1873, it would probably have brought if in good condition about $900 a year. I rented it as receiver in midsummer of 1874 at the rate of $600 per year rather than have it vacant. October and November of each year constitute the rental season in Savannah, and when houses lie over after these months you have to shut them up or do the best with them you can, it being difficult to rent them after said months.

2d. To the second direct interrogatory the witness answering saith: I am a real estate agent and broker. From the amount and kind of property which I have under my control for rent, and from my personal
389 observation, experience, and knowledge in my business, I am able to judge of the value for rent of such property as that referred to.

3d. To the third direct interrogatory the witness answering says: I know nothing further of benefit to either party to this cause.

1st X. To the first cross-interrogatory the witness answering says: I do not know positively what the entire house has ever rented for, as I believe some portion of it has always been reserved for Mrs. Tefft. As a general thing rents have depreciated from fifteen to twenty per cent. in the last two years in Savannah. I don't know the condition of said house, of my own knowledge, as I have never been over the entire house. To the best of my knowledge and belief there are no fire-places or water or gas or plastering in the upper story, that is, in the attic.

2d X. To the second cross-interrogatory the witness answering
390 says: The complainant has pointed out to me certain repairs which she had made about the house and paid for, the value of which I do not know.

ED. F. NEUFVILLE.

Answered, sworn, and subscribed before us at Savannah, Georgia, this 9th day of October, A. D. 1874.

G. A. HOWELL, *Com'r.* [L. S.]
B. A. DENMARK, *Com'r.* [L. S.]

391 *Copies of papers introduced as evidence by defendant.*

STATE OF GEORGIA,
Chatham County:

This memorandum of agreement made this eleventh day of August, in the year of our Lord one thousand eight hundred and sixty-five, between Mrs. Penelope W. Tefft of the first part, and Robert Erwin of the second part, both of said parties being in the county and State aforesaid, witnesseth:

That the party of the first part, for the consideration hereinafter mentioned, agrees to sell to the said party of the second part all that lot of land situate in the city of Savannah, on the southwest corner of Bull and Jones streets, and known in the plan of said city as lot number five (No. 5), Monterey ward, with the buildings and improvements, and all the fixtures of said buildings, at and for the sum of twenty thousand dollars, for which amount the party of the second part is to give his two promissory notes for ten thousand dollars each, payable respectively one and two years after the date thereof, with interest from date, interest payable quarterly, said notes to be secured by a mortgage on
392 the property; and the party of the second part agrees to purchase from the party of the first part the lot of land and improvements hereinbefore described upon the terms hereinbefore specified and to give the notes and mortgage as hereinbefore set forth. And it is stipulated

and agreed between the parties that the sale shall be completed and the titles executed and property delivered in the last week in October next. And it is further agreed between the parties that if either party shall refuse to fulfill the terms of this agreement the party so refusing shall forfeit to the other the sum of five thousand dollars, this amount not to be considered by way of penalty but hereby agreed upon by the parties as stipulated damages. And it is further agreed that at the time the above sale is made the furniture in said buildings shall be appraised by two disinterested persons, one to be chosen by each party, with power to call in a third in case of disagreement, and the party of the second part agrees to purchase such portions of the furniture as the party of the first part may be disposed to sell, at the value to be so fixed by said appraisers.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

393 ROBERT ERWIN. [L. S.]
PENELOPE W. TEFFT. [L. S.]

Signed, sealed and delivered in presence of—
CHAS. S. HARDEE.
JAMES GALLONDET.

[Int. revenue stamps.]

SAVANNAH, GEORGIA.
September 4th, 1865.

By mutual agreement the above contract and agreement is hereby annulled.

Witness our hands and seals this fourth day of September, 1865.

ROBERT ERWIN. [L. S.]
PENELOPE W. TEFFT. [L. S.]

Witness:
JAMES GALLONDET.
CHAS. S. HARDEE.

394 *Estate of Henry D. Tefft in account with William P. Tefft, administrator.*

DR.

1847.					
Sept.	27.	To amount refunded Mrs. Harriet Hunter, money placed in the hands H. D. T. to purchase two grates			$28 00
"	27.	" Paid State & county taxes			49
Oct.	12.	" "	bill James Anderson & Co		5 00
"	"	" "	Andrew, Low & Co., balance due them as per statement		393 40
"	"	" "	bill Hamilton & Symons		8 50
Nov.	4.	" "	his note at Marine Bank		300 00
1850.					
April	15.	" "	R. D. Walker for building vault in cemetery		328 50
"	"	" "	expenses removing remains from Providence, R. I		21 42
1849.					
Nov.	15.	" "	bill clerk court ordinary		16 93

1850.			
July	8.	To paid Georgia Reading Room	2 50
	" "	Charles E. Tefft	2,123 63
	" "	William P. Tefft	2,123 64
			$5,355 01

CR.

1849.			
Sept.	27.	By balance due him in Marine Bank and transferred to Bank State Georgia	$33 01
395	" 29.	" amount received from Magnolia Encampment number 1, for personal benefit to 5 weeks' sickness	35 00
Sept.	29.	By amount received from Oglethorpe Lodge No. 1, personal benefit to 5 weeks' sickness	55 00
Oct.	25.	" amount received from life insurance through W. P. Hunter	5,000 00
Dec.	7.	" amount received for 4 shares Marine Bank stock (dividend)	10 00
1850.			
June	1.	" amount received for 4 shares Marine Bank stock (dividend)	10 00
Dec.	1.	" amount received for 4 shares Marine Bank stock (dividend)	12 00
"	1.	" transfer of 4 shares Marine Bank stock to Mrs. J. R. Tefft by consent C. C. Tefft	200 00
			$5,355 01

E. E.
Savannah, 1st January, 1851.

WM. P. TEFFT.
Administrator Estate H. D. Tefft.

Ex. & correct.

S. GOODALL, *Clk.*

Sworn to before me 8th January, 1851.

S. GOODALL, *Clk.*

STATE OF GEORGIA,
Chatham County:

SAVANNAH, *24th Sept.*, 1849.

To the honorable the justices of the inferior court said county, sitting for ordinary purposes:

396 GENTLEMEN: I hereby apply for letters of administration on the estate of Henry D. Tefft, late of Chatham County, deceased, and pray that the same may be granted for the benefit of the heirs and creditors.

Respectfully,

W. P. TEFFT.

Amount of property, $5,500.
Securities, I. K. Tefft.

GEORGIA,
Chatham County:

To all whom it may concern:

Whereas William P. Tefft will apply to the honorable the inferior court of said county, when sitting for ordinary purposes, for letters of administration on the estate and effects of Henry D. Tefft, late of said county, deceased:

These are therefore to cite and admonish all and singular the kindred and creditors of the said deceased to file their objections (if any they have) to the applicant, in the clerk's office of said court, on or before the 25th day of October next, otherwise letters of administration will be granted.

Witness the honorable Elias Reed, one of the justices of said
397 court, this 25th day of September, A. D. 1849.

SEABORN GOODALL,
C. C. O. C. C.

I, Philip I. Pouch, of the publishers of the Savannah Georgian, a public gazette published at Savannah, Georgia, do hereby certify that the above application has been published for thirty days in said gazette, commencing on the 25th of September, 1849.

PHILIP I. POUCH.

NOV. 3RD, 1849.

STATE OF GEORGIA,
Chatham County:

Know all men by these presents that we, William P. Tefft and Isreal K. Tefft, are held and firmly bound and obliged into the honorable the justices of the inferior court of Chatham County, for the time being acting as a court of ordinary, in the sum of five thousand five hundred dollars, to be paid to the said justices, their successors in office or assigns, for which payment well and truly to be made and done we bind ourselves, jointly and severally, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated at Savannah the 5th day of November, in the year of our Lord one thousand eight hundred and forty-nine.

398 The condition of the above obligation is such that if the above bound William P. Tefft, administrator of the goods, chattels and credits of Henry D. Tefft, late of said county, deceased, do make a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to hands, possession or knowledge of the said William P. Tefft, or into the hands or possession of any other person or persons for him, and the same so made do exhibit unto the said court of ordinary when he shall be thereunto required, and such goods, chattels and credits do well and truly administer according to law, and make a just and true account of his actings and doings therein when required by the superior court, or register of probates for the county, all the rest of the goods, chattels and credits which shall be found remaining upon the account of the said administration, the same being first allowed by the said court, shall deliver and pay to such persons respectively as are entitled to the same by law, and if it shall hereafter appear that any last will and testament was made by the said deceased, and the same be proved before the court, and the executors obtain a certificate of the probate thereof, and the said William P. Tefft
399 do in such case if required render and deliver up the said letters

of administration, then this obligation to be void, else to remain in full force.

W. P. TEFFT. [L. S.]
I. K. TEFFT. [L. S.]

Sealed and delivered in presence of—
SEABORN GOODALL, *Clk.*

I do solemly swear that , deceased, died without any will, as far as I know or believe, and that I will well and truly administer on all and singular the goods and chattels, right and credit, of the said deceased, and pay all just debts as far as the same will extend and the law requires me, and that I will make a true and perfect inventory of all and singular the goods and chattels, rights and credits, and a just return thereof, when thereunto required, so help me God.
Sworn to day , 18 .

Court of ordinary, Chatham County, November term, 1849. No. 8.

Application of William P. Tefft for letters of administration on
400 the estate of Henry D. Tefft, late of said county, deceased, and it appearing to the court that the citation required by law has been duly published for thirty days and that no caveat has been filed, it is ordered that letters of administration as prayed for do issue to the said William P. Tefft, on giving as his security Israel K. Tefft in the sum of five thousand five hundred dollars and on taking and subscribing the following oath prescribed by law, to wit:

I do solemnly swear that Henry D. Tefft, deceased, died without any will, as far as I know or believe, and that I will well and truly administer on all and singular the goods and chattels, rights and credits, of the said deceased, and pay all his just debts as far as the same will extend and the law requires me, and that I will make a true and perfect inventory of all and singular the goods and chatels, rights and credits, and a just return thereof when thereunto required, so help me God.

W. P. TEFFT.

Sworn to in open court this 5th day November, 1849.
SEABORN GOODALL, *Clk.*

* * * * * * *

401 STATE OF GEORGIA,
Court of Ordinary, Chatham County:

By the honorable the justices of the inferior court of Chatham County, sitting for ordinary purposes.

To John B. Gallie, E. A. Soullard, and Charles A. L. Lamar:

These are to authorize you, or any three of you, to repair to all such parts and places within the county and State aforesaid as you shall be directed unto by William P. Tefft, administrator of the estate of Henry D. Tefft, late of said county, deceased, wherever any of the goods and chattels of the said deceased are or do remain within the said parts or places, and the goods and chattels which shall be there shown you by the said administrator you shall view and appraise according to their just value, being first sworn to make a true and perfect inventory and appraisement of the said goods and chattels, and you shall cause the same inventory and appraisement to be returned to the said adminis-

trator under your hands or under the hands of any three of you on or before the fifth day of January next ensuing the date thereof.

402 Witness the honorable R. T. Gibson, one of the justices, this fifth day of November, in the year of our Lord one thousand eight hundred and forty-nine.

SEABORN GOODALL,
C. C. O. C. C.

You, John B. Gallie, E. A. Soullard, and Charles A. L. Lamar, do swear that you will make a true appraisement and inventory of all and singular the goods, chattels, and credits of Henry D. Tefft, deceased, as shall be produced and sworn to you by William P. Tefft, adm'r of the said deceased, and that you will return the same certified under your hands to the said administrator within the time prescribed by law.

JOHN B GALLIE.
E. A. SOULLARD.
C. A. L. LAMAR.

Sworn before me this 4th day of January, 1850.

GEO. A. COYLER,
Not. Pub. C. C., Ga.

We, the undersigned, appraisers of the estate of Henry D. Tefft, deceased, do hereby certify that the following property has been pointed out to us by W'm P. Tefft, administrator, and we consider the following appraisement just and true:

Insurance policy on his life, in office W. P. Hunter.....	$5,000 00
2 shares in the Chatham Artillery Armory Hall.....	100 00
Balance to his credit in Marine Bank Sept., '49.....	33 01
403 Cash from I. O. O. F.....	90 00
4 shares Marine Bank stock.....	300 00
Personal effects, watch, etc.....	200 00
	5,623 01

JOHN B. GALLIE.
E. A. SOULLARD.
C. A. L. LAMAR.

SAVANNAH, *Jan. 4th*, 1850.

Court of ordinary, Chatham County, Jan'y term, 1851. 62.

The clerk reports that he has examined the document and vouchers of W'm P. Tefft, adm'r of Henry D. Tefft, and found them correct, that on the 1st January, 1851, the accounts were balanced. Ordered that said account and reports be allowed and recorded.

* * * * * * *

STATE OF GEORGIA,
Ordinary's Office, Chatham County:

I, Benjamin B. Ferrill, deputy clerk of the court of ordinary of Chatham County and State of Georgia, do hereby certify the above and foregoing instrument of writing to be a true and complete exemplifi-

494 cation of the proceedings had in the matter of the permanent administration on the estate of Henry D. Tefft, of said county

and State, deceased, as appears, reference being had to the records in this office.

In witness whereof I have hereunto set my official signature and attached the seal of the court of ordinary, at the city of Savannah, county and State aforesaid, this the twenty-eight' day of September, A. D. 1874.

[SEAL.] B. B. FERRILL,
Dep'ty Clk C. O. C. C.

STATE OF GEORGIA,
Chatham County:

I, John O. Ferrill, judge of the court of ordinary of Chatham County and State of Georgia, do hereby certify that Benjamin B. Ferrill, whose genuine is attached to the above and foregoing certificate, is and was at the time of signing the same the duly qualified deputy clerk of my court; that the attestation is in due form of law, and that all his official acts are entitled to full faith and credit.

405 Witness my official signature, at the city of Savannah, this the twenty-eig'th day of September, A. D. 1874.

JOHN O. FERRILL,
Judge of the Court of Ordinary, C. C.

STATE OF GEORGIA,
Ordinary's Office, Chatham County:

I, Benjamin B. Ferrill, deputy clerk of the court of ordinary of Chatham County, State of Georgia, do hereby certify that John O. Ferrill, whose genuine signature is attached to the above certify', is and was at the time of signing the same the *the* judge of the court of said county, duly elected, commissioned, and qualified.

In witness whereof I have hereunto set my official signature and attached the seal of the court of ordinary, at the city of Savannah, county and State aforesaid, this the twenty-eight day of September, A. D. 1874.

[SEAL.] B. B. FERRILL,
Dep'ty Clk C. O. C. C.

406 And afterwards, to wit, on this twentieth day of January, A. D. 1877, final decree was rendered in said cause as follows:

Final decree.

This cause came on to be heard at this term upon bill, answers, exhibits, and proofs, and was argued by counsel; and thereupon, upon consideration thereof, it is declared that nothing appears to impeach the title conveyed by the deed from the mayor and aldermen of the city of Savannah to Charles S. Henry as trustee for Penelope W. Tefft, dated July 19th, 1848, according to its terms, or to encumber the same with any trust, express or implied, in favor of the complainant or any other person through whom she claims. And thereupon, it is ordered, adjudged, and decreed that the injunction heretofore granted in said cause be dissolved, and that the complainant's bill to stand dismissed. And it is further ordered, adjudged, and decreed that the said complainant do pay all the costs of this suit.

W. B. WOODS, *Judge.*

JAN. 20, 1877.

Thereupon the said complainant, by her solicitors, gives notice in

trator under your hands or under the hands of any three of you on or before the fifth day of January next ensuing the date thereof.
402 Witness the honorable R. T. Gibson, one of the justices, this fifth day of November, in the year of our Lord one thousand eight hundred and forty-nine.

SEABORN GOODALL,
C. C. O. C. C.

You, John B. Gallie, E. A. Soullard, and Charles A. L. Lamar, do swear that you will make a true appraisement and inventory of all and singular the goods, chattels, and credits of Henry D. Tefft, deceased, as shall be produced and sworn to you by William P. Tefft, adm'r of the said deceased, and that you will return the same certified under your hands to the said administrator within the time prescribed by law.

JOHN B GALLIE.
E. A. SOULLARD.
C. A. L. LAMAR.

Sworn before me this 4th day of January, 1850.

GEO. A. COYLER,
Not. Pub. C. C., Ga.

We, the undersigned, appraisers of the estate of Henry D. Tefft, deceased, do hereby certify that the following property has been pointed out to us by W'm P. Tefft, administrator, and we consider the following appraisement just and true:

Insurance policy on his life, in office W. P. Hunter	$5,000	00
2 shares in the Chatham Artillery Armory Hall	100	00
Balance to his credit in Marine Bank Sept., '49	33	01
403 Cash from I. O. O. F	90	00
4 shares Marine Bank stock	300	00
Personal effects, watch, etc	200	00
	5,623	01

JOHN B. GALLIE.
E. A. SOULLARD.
C. A. L. LAMAR.

SAVANNAH, *Jan. 4th*, 1850.

Court of ordinary, Chatham County, Jan'y term, 1851. 62.

The clerk reports that he has examined the document and vouchers of W'm P. Tefft, adm'r of Henry D. Tefft, and found them correct, that on the 1st January, 1851, the accounts were balanced. Ordered that said account and reports be allowed and recorded.

* * * * * * *

STATE OF GEORGIA,
Ordinary's Office, Chatham County:

I, Benjamin B. Ferrill, deputy clerk of the court of ordinary of Chatham County and State of Georgia, do hereby certify the above and foregoing instrument of writing to be a true and complete exemplifi-
494 cation of the proceedings had in the matter of the permanent administration on the estate of Henry D. Tefft, of said county

and State, deceased, as appears, reference being had to the records in this office.

In witness whereof I have hereunto set my official signature and attached the seal of the court of ordinary, at the city of Savannah, county and State aforesaid, this the twenty-eight' day of September, A. D. 1874.

[SEAL.] B. B. FERRILL,
Dep'ty Clk C. O. C. C.

STATE OF GEORGIA,
Chatham County:

I, John O. Ferrill, judge of the court of ordinary of Chatham County and State of Georgia, do hereby certify that Benjamin B. Ferrill, whose genuine is attached to the above and foregoing certificate, is and was at the time of signing the same the duly qualified deputy clerk of my court; that the attestation is in due form of law, and that all his official acts are entitled to full faith and credit.

405 Witness my official signature, at the city of Savannah, this the twenty-eig'th day of September, A. D. 1874.

JOHN O. FERRILL,
Judge of the Court of Ordinary, C. C.

STATE OF GEORGIA,
Ordinary's Office, Chatham County:

I, Benjamin B. Ferrill, deputy clerk of the court of ordinary of Chatham County, State of Georgia, do hereby certify that John O. Ferrill, whose genuine signature is attached to the above certify', is and was at the time of signing the same the *the* judge of the court of said county, duly elected, commissioned, and qualified.

In witness whereof I have hereunto set my official signature and attached the seal of the court of ordinary, at the city of Savannah, county and State aforesaid, this the twenty-eight day of September, A. D. 1874.

[SEAL.] B. B. FERRILL,
Dep'ty Clk C. O. C. C.

406 And afterwards, to wit, on this twentieth day of January, A. D. 1877, final decree was rendered in said cause as follows:

Final decree.

This cause came on to be heard at this term upon bill, answers, exhibits, and proofs, and was argued by counsel; and thereupon, upon consideration thereof, it is declared that nothing appears to impeach the title conveyed by the deed from the mayor and aldermen of the city of Savannah to Charles S. Henry as trustee for Penelope W. Tefft, dated July 19th, 1848, according to its terms, or to encumber the same with any trust, express or implied, in favor of the complainant or any other person through whom she claims. And thereupon, it is ordered, adjudged, and decreed that the injunction heretofore granted in said cause be dissolved, and that the complainant's bill to stand dismissed. And it is further ordered, adjudged, and decreed that the said complainant do pay all the costs of this suit.

W. B. WOODS, *Judge.*

JAN. 20, 1877.

Thereupon the said complainant, by her solicitors, gives notice in

open court that at the proper time she will move for an appeal to the Supreme Court of the United States.

407 And afterwards, to wit, on the twentieth day of January, A. D. 1877, the court ordered the following entry to be made in the premises, which entry is in the words and figures following, to wit:

Order allowing appeal, fixing bond, and allowing supersedeas.

Final decree being this day rendered by said court in favor of the defendants in said cause, dismissing said bill; and said complainant giving notice of intention to appeal to the Supreme Court of the United States to review and reverse the said decree complained of, on motion of the solicitors of said Sarah S. Walden, said complainant, it is ordered and adjudged that the said appeal be and the same is hereby allowed, and that the bond is fixed at five hundred dollars, sureties to justify before the clerk of this court, or a United States commissioner, and when approved by the officer before whom such justification is made, to be received by the clerk; which being done, the allowance of
408 this appeal shall operate as a supersedeas.

In open court, January 20th, 1877.

W. B. WOODS, *Judge.*

AMOS T. AKERMAN.
R. R. RICHARDS.
Solicitors for Complainant.

Service of this order acknowledged, copy waived, and all other or further notice and citation waived.

January 20, 1877.

JACKSON, LAWTON & BASINGER,
Sol'rs for Def't, Skinner.
A. P. & S. B. ADAMS,
Solicitors for John N. Lewis & Chas. S. Hardie, Ex'rs of Chas. S. Henry

And afterwards, to wit, on the twenty-fifth day of January, A. D. 1877, came the said Sarah S. Walden, complainant and appellant, by her solicitors, and filed her petition for appeal &c., as follows:

Petition on appeal.

To the honorable the Supreme Court of the United States:

409 The appeal of Sarah S. Walden, the above-named complainant and appellant, respectfully showeth: That on the sixth day of May, A. D. 1874, the above-named complainant, Sarah S. Walden, filed her bill in equity in the fifth circuit court of the United States for the southern district of Georgia, against the said above-named Darius S. Skinner, and Charles S. Hardee and John N. Lewis, executors of C. S. Henry; and in and by her said bill in equity alleged that she was a resident of the city of Savannah, State of Georgia, and a citizen of said State, and brought her bill for injunction and relief against said named defendants, the said defendant, Darius S. Skinner, being a citizen of the State of Rhode Island, and the said Charles S. Hardee and John N. Lewis being citizens of the State of Georgia, and executors of the last will and testament of Charles S. Henry, deceased, who in his lifetime was trustee for one Mrs. Penelope W. Tefft and her children. The bill goes on and states that on the twenty-eighth day of October, A. D.

1874, the complainant, Sarah S. Walden, intermarried with one William Pitt Tefft (sometimes known as Wm. P. B. Teft), and that on the ninth day of August, A. D. 1852, said Wm. P. Teft departed this
410 life intestate, leaving no children, and the complainant, as his said wife, his sole heir at law and legal representative; that on the fourth day of June, A. D. (1860,) eighteen hundred and sixty, she intermarried with Charles Carroll Walden, who departed this life on the eighth day of December, A. D. 1861, testate, with no living children by complainant, and by will bequeathing and devising unto her all property and rights owned or possessed or to which she had claim or right at the date of her said marriage with said Walden; that the father of her said first husband, said William P. Tefft, was Israel K. Tefft, of Chatham County, Georgia, who died intestate on the thirtieth day of June, A. D. 1862, and that no administration was ever had upon the estate of said Israel K. Tefft, either in Georgia or elsewhere; that the mother of her said first husband was Penelope W. Teft, wife of said Israel K. Teft, at the date of his death, and said Penelope W. Teft departed this life in Savannah, Georgia, on the eleventh day of September, A. D. 1873, testate.

That at the date of complainant's (Sarah S. Walden's) marriage with her said first husband, William P. Teft, in 1847, there were then living two other children of the said Israel K. and Penelope W. Teft, the said two other children being brothers of her said first husband,
411 William P. Teft, and named, respectively, Henry Denison Teft, who died childless, intestate, and a bachelor, on the thirteenth day of August, A. D. 1849, and Charles E. Tefft, who also died childless, intestate, and a bachelor, on the twelfth day of June, A. D. 1854; that at the date of the death of said Henry Denison Teft he had a policy of life insurance on his life for five thousand dollars in favor of his two brothers, William P. Teft and Charles E. Teft, which said sum was collected in accordance with law and paid over by his administrator to said two remaining brothers, William P. and Charles E.

The bill further states that on the 28th day of June (twenty-eighth day of June), A. D. 1831, there was executed an original trust deed from one Elias Fort to Charles S. Henry and S. C. Greene, as trustees for said Penelope W. Teft and her three said sons, William P. Teft (husband of com-complainant), Henry D. Tefft, and Charles E. Teft. A copy of the said trust-deed is annexed as an exhibit to the bill of complaint; and in and by said trust-deed the property therein mentioned (being real estate in Savannah, Georgia), is conveyed to said trustees in trust for the said
412 Penelope and said specified three children; and it is therein declared that said property is for the use of said Penelope W. Teft during her lifetime and said three sons, and after the death of said Penelope for said three sons alone, as tenants in common, and it is thereinafter declared that should said Penelope die without requesting the trustees to sell and dispose of said real estate and join in a conveyance of the same to the purchasers, the proceeds to be reinvested upon the same uses and trusts as aforesaid, to wit, for the use of said Penelope W. Tefft during her lifetime and her three specified sons, and after her death for said sons alone, as tenants in common; then the property was, after the death of said Penelope, to be distributed by said trustees to such of said sons as should survive so as to attain the age of twenty-one years.

The bill further states that the said trust-property was sold by said trustees for reinvestment during the lifetime of said Penelope at her

request, she joining in the conveyance under the terms of said trust, that said real estate was sold for the sum of twenty-four hundred dollars on the thirtieth day July, A. D. 1849, and that the proceeds
413 of said sale, with the exception of six hundred dollars thereof, which were turned over to said Penelope W. Tefft, to wit, eighteen hundred dollars of such proceeds, were invested in the buildings then erecting upon a certain lot of land in Savannah, Georgia, known as lot No. 5, Monterey ward.

That said lot No. 5, Monterey ward, had been purchased on the nineteenth day of July, A. D. 1848, by Charles S. Henry, who was at that time the surviving trustee (S. C. Greene, the other trustee, being dead), from the city of Savannah, to hold upon the same uses and trusts as contained in said trust-deed from Elias Fort, made as aforesaid on the twenty-eighth day of June, A. D. 1831, that is to say, for said Penelope W. Teft and said three specified sons during the lifetime of said Penelope, and after her death to said sons alone, &c.; that Israel K. Teft, the said husband of said Penelope, and said three sons, each furnished to said trustee, Charles S. Henry, for that purpose, one-fourth of said purchase money.

That not only were said eighteen hundred dollars, proceeds of said old trust estate under the Elias Fort deed, invested as aforesaid in the buildings erecting in A. D. 1849, upon said lot number five, Mon-
414 terey ward aforesaid, but that in addition thereto the said two surviving sons, William P. Teft (husband of complainant, Sarah S. Walden), and Charles E. Teft, invested in said buildings upon said lot then erecting the said insurance money of their deceased brother, Henry Denison Teft, to wit, two thousand five hundred dollars each, and that all this money was so paid and invested in said lot No. five, Monterey ward, and improvements, upon the express belief and understanding and agreement that the said Charles S. Henry held, and was to hold, said lot number five and improvements upon the same uses and trusts as first declared in said old Fort deed made in 1831; and that the title so existed and was taken accordingly by said Charles S. Henry as trustee for them.

The bill goes on and states further that the buildings upon said lot number five, Monterey ward, were completed about the month of January, 1850; that complainant's said husband, William P. Teft, died in the year A. D. 1852, and that the remaining son, Charles E. Teft, died in 1854, and that complainant, Sarah S. Walden, was, and is, as sole heir at law, entitled to one-half interest in said lot number five and
415 improvements, after the death of said Penelope W. Teft; that from the time of the completion of said buildings in January, 1850, to the death of said William P. Teft, in 1852, and from his death to the filing of her bill of complaint, the said complainant, Sarah S. Walden, has generally resided upon said lot number five in her character and right as heir-at-law of her said deceased husband, and as part owner of said premises; that her rights as said heir-at-law of her said deceased husband, William P. Teft, in said premises, was never disputed, but expressly recognized, and no effort was ever made by any person prior to the death of said Penelope W. Teft, directly or indirectly, to prevent or hinder said Sarah S. Walden from the free and ample enjoyment of her said interest in said premises; and that after the death of said Israel K. Teft (husband of said Penelope), said Sarah S. Walden continued to reside upon said premises with said Penelope W. Teft until the death of said Penelope, which occurred on the eleventh day of September, A. D. 1873; and said Penelope during her lifetime made said Sarah S.

Walden pay one-half of all repairs, taxes, insurance, &c., and other expenses of said property, upon the ground that said Sarah S. Walden was equally interested and entitled to said property with said
416 Penelope, and liable therefore to bear her proportion of said expenses, and after the death of said Penelope said Sarah S. Walden paid the whole of said expenses, the amount thereof being set out in an exhibit annexed to her bill of complaint.

The bill of complaint further states that on the twenty-eighth day of September, A. D. 1872, the said Penelope, while laboring under very many evil influences, and in a low and depressed frame of mind, executed a deed of gift of the whole of said lot number five, Monterey ward, and improvements, to her nephew, Darius S. Skinner, of Rhode Island, aforesaid, to take effect in possession after her (said Penelope's) death, under which deed of gift the said Darius S. Skinner, immediately after the death of said Penelope, attempted to take possession of the whole of said premises, and eject said Sarah S. Walden therefrom, whereupon she resisted said attemted ouster; whereupon said Darius S. Skinner commenced an action of ejectment against her for said premises in the fifth circuit court of the United States for the southern district of Georgia, which action of ejectment is still pending in said court.

The bill further states that said Sarah S. Walden, against whom said action of ejectment had been so commenced, was prevented from
417 asserting her title and equities in said premises, and was at great disadvantage in defending said action of ejectment for the following reasons and state of facts, to wit: Because the said trustee, Charles S. Henry, in whom the title to said lot number five, Monterey ward, and improvements, was to be, under the understanding and agreement of all parties aforesaid, vested for the benefit of said William P. Teft (husband of complainant), and the others, had omitted to see that the title was so made, and said title appearing by the deed of conveyance from the city of Savannah to be in the following words, "to Charles S. Henry, trustee of Mrs. Penelope W. Teft, wife of Israel K. Teft," without the words, "and her three children, William P. Tefft, Henry D. Teft, and Charles E. Teft, during the lifetime of the said Penelope W. Tefft, and after her death to and for said three children alone," and the said deed from the city of Savannah expressed no trust whatever, not even containing words of separate use for said Penelope W. Tefft; and the legal effect of said deed, as it stands, being under the laws of Georgia to vest the title of said property absolutely in Israel K. Tefft (husband of said Penelope). In consequence of which mistake in the drafting of said deed of conveyance, the said Darius S. Skinner would appear in
418 a court of law to have a better title than said Sarah S. Walden, inasmuch as the said Penelope W. Teft was sole heir at law of said Israel K. Teft, and if said deed were to stand unreformed and the equities of Sarah S. Walden not allowed, the said Penelope W. Teft had the right to give away said entire property to said Darius S. Skinner in and by said deed made as aforesaid in A. D. 1872; and inasmuch also that the same consequence would follow should it be determined from the face of said deed from said city of Savannah that the title to said Penelope W. Teft was perfect upon the death of her said husband, Israel K. Teft, in A. D. 1862, aforesaid, by reason of the said Israel K. Teft not having exercised his marital rights by reducing said property into his sole possession during his lifetime, and inasmuch, also, as in a court of law the said two thousand five hundred dollars so contributed by said William P. Teft to the construction of said improvements upon said lot number five, Monterey ward, and also the reinvestment of said

eighteen hundred dollars, proceeds of said old lot under said trust deed of Elias Fort, made in A. D. 1831, as aforesaid, in said improvements as aforesaid, which said sums of money having been invested in said property upon the understanding that the same uses and trusts
419 contained in said Elias Fort deed entered into and followed into said lot number five, Monterey ward, and improvements thereon, became and were equitable charges upon said property which could not be asserted at law, and, if at all, not so well as in equity, where cases of this kind are more properly cognizable and relievable.

The bill further states that Israel K. Teft, during his lifetime, always acknowledged the rights of said Sarah S. Walden as heir at law of her deceased husband William P. Teft, and as part owner of said property, and a letter of said Israel K. Teft to his said son William P. Teft is annexed to the bill of complaint, showing that he considered said money so contributed as having gone into said lot and improvements upon the understanding that the same uses and trusts contained in the old Elias Fort deed followed and entered into this property, and further, that Israel K. Teft was the actual builder of the improvements upon said lot number five, Monterey ward, and managed the same with the consent of said trustee, Charles S. Henry, and contributed money to the erection of said improvements upon the same understanding as to said uses and trusts.

The bill further states that the said Charles S. Henry, trustee as aforesaid, died in the year A. D. 1864 testate, leaving Charles S.
420 Hardee and John N. Lewis as executors of his last will and testament, who qualified as such, and are yet undischarged from their trusts and duties as executors, and who are successors to said Charles S. Henry in said trusts created by the circumstances aforesaid, connected with the purchase of said lot number five, Monterey ward, and the erection of said improvements thereon, and the equitable charges aforesaid, in favor of complainant, upon said property.

The bill of complaint finally prays that the said deed of conveyance from the said city of Savannah may be reformed, so as to speak the true interest and purposes for which it was purchased as aforesaid, and to include the same uses and trusts as first declared and set forth in the said old trust deed from Elias Fort, as aforesaid, according to the understanding and agreement of the parties aforesaid, and prays that the equities of complainant in and to said property, including the improvements thereon, may be set forth and decreed and allowed by the court, including such equities as may arise in her favor from her said payment of taxes, insurance, repairs, &c., upon said property during the lifetime and since the death of said Penelope W. Teft, and that until said deed be so reformed, and said equities decreed and allowed to said com-
421 plainant, that the said Darius S. Skinner be enjoined from further proceeding with his said ejectment suit upon the common law side of said court; and the bill prays further for such other and further relief as the circumstances of the case require, and may seem meet; and prays further that when said deed shall, by the decree of the court, be so reformed, that the said Charles S. Hardee and John N. Lewis, as executors of said Charles S. Henry, be decreed to perform the trusts to be performed by said Charles S. Henry, had he lived, and that the interests of Darius S. Skinner in said premises be ascertained, as also the interests of Sarah S. Walden, and when ascertained that the said property be partitioned between them or divided according to their respective rights and equities.

The bill also alleged that Darius S. Skinner was insolvent, and exhib-

its are annexed to the bill showing the old Fort trust deed of 1831; the deed from the city of Savannah sought to be reformed; the taxes, &c., paid by complainant; the letter of Israel K. Teft showing his understanding of the deed from Savannah, and various other exhibits, showing the truth of the statements in the bill.

422 The answer (separate) of Darius S. Skinner admits the alleged marriage of Sarah S. Walden to William P. Teft, and that William died childless and intestate, as alleged in the bill, on August ninth, A. D. 1862; admits the subsequent marriage with Walden and his death, as alleged in the bill; admits that at the time of her marriage with William P. Teft the trusts as in existence according to the old Elias Fort deed in 1831, and that Charles S. Henry was the surviving trustee, and his death in A. D. 1864; admits the death of each member of the Teft family as alleged in the bill, his deed of gift from Penelope W. Teft in 1872, his subsequent attempt to oust Sarah S. Walden, and then his ejectment suit, &c., but says that he claims the whole of said lot numbered five, Monterey ward, and improvements under his said deed of gift, and avers that there was no mistake in the deed from Savannah, that it was made as all parties intended it to be made, and avers that the sole ownership of said lot and improvements was in Penelope W. Teft; admits the erection of the improvements upon said lot number five, Monterey ward, in A. D. 1849, and the sale of the old Fort trust estate in A. D. 1849, for two thousand four hundred dollars,

423 and avers that if the money went into the improvements upon said lot number five, Monterey ward, it went in with notice of the state of the title, the deed from the city of Savannah having been recorded; admits that as insurance money on the life of Henry D. Teft, who died in 1849, after paying expenses of administration thereon, remained four thousand two hundred and forty-seven dollars and twenty-seven cents, and that William P. Teft got thereof one-half and Charles E. Teft the other half, but denies that William P. Teft put his half in said improvements upon said lot number five, in Monterey ward. He denies that Sarah S. Walden ever resided upon the premises except as the guest of Mr. Israel K. Teft and Mrs. Penelope W. Teft, and he avers that the true and proper construction of the old Fort deed was not to vest any interest in William P. Teft in said old Fort trust property, but that William died before his mother Penelope W. Teft, and before his brother Charles, and by the terms of said old trust deed had no interest in said property which could descend to his heirs, and he submits that he ought to recover not only the whole of said trust property of Penelope W. Teft, under the said deed from the city of Savannah, but also

424 mesne profits at the rate of twelve hundred dollars per year since September 11th, A. D. 1873, the date of Penelope W. Teft's death. He also avers that he is Penelope W. Teft's heir at law, if said Penelope had died intestate, but that said Penelope died testate, and that by her will he is the divisee of said number five, Monterey ward.

The answers of Charles S. Hardee and John N. Lewis, executors of Charles S. Henry, admit from information and belief the matters alleged in the bill, but aver that the court has no jurisdiction over them, because they are citizens of Georgia, residing therein, and Sarah S. Walden is likewise a citizen of the same State, and resides therein.

The cause went to trial upon bill, answers, exhibits and proofs; and by the testimony of fifteen respectable witnesses the complainant proved every material allegation in her bill of complaint. The sale of the old Fort trust estate was proved by the deed of bargain and sale, and by witnesses; the power of attorney to the trustee to sell, signed by Will-

iam P., Henry D., and Charles E. Teft, and directing the trustee to reinvest the proceeds in other real estate in Savannah, was put in
425 evidence; the will of Charles C. Walden (second husband of complainant) was put in evidence, devising to the complainant all such interests in real estate or other property, real or personal, owned or possessed by her, or to which she might have been entitled at the time of his marriage with her; a paper signed by Penelope W. Teft in July, A. D. 1872, prior to her deed of gift to Skinner, and acknowledging that Sarah S. Walden since A. D. 1862 had paid her proportion of expenses of all kinds upon said lot number five, Monterey ward, was put in evidence; the receipts for taxes, &c., paid by complainant were put in evidence; the deed from the city of Savannah of lot number five, on a printed blank, in the handwriting of the clerk of the city, was put in evidence; and witnesses who were present when the money was furnished to the trustee to purchase the lot testified that the money for that purchase was furnished equally by William P. Teft, Henry D. Teft and Charles E. Teft, and Israel K. Teft, and that when the purchase money was paid, all parties, including the trustee, believed and understood that the title from the city was to be taken so as to contain the same uses and trusts as contained in the first part of the old trust deed of Elias Fort. The contribution by William P. Teft of the life
426 insurance money coming to him from his brother Henry's estate was shown to have been put by him upon improvements upon said lot number five, with the express understanding that the said lot and improvements were to be held upon the same uses and trusts as contained in said old trust deed of Fort; and it was also shown that upon the like understanding an additional sum of money was put in by him, amounting to seven hundred and fifty dollars, belonging to his wife, the complainant; and in fact it was clearly proved by a great mass of evidence that all parties, Charles S. Henry, the surviving trustee, Israel K. Teft, Penelope W. Teft, William P. Teft, Henry D. Teft and Charles E. Teft, and the complainant, were always laboring under the impression that said deed from Savannah was in fact made (as it was intended by them to be) so as to include the uses and trusts contained in the old trust deed of Elias Fort; and under this universal understanding and belief in the entire Teft family, many declarations were made by them to numerous parties of the rights and interests of complainant in said property as heir at law of her deceased husband and part owner of said premises. It was proved that complainant had generally resided
427 upon said premises since her marriage with William P. Teft in A. D. 1847, and always asserted her rights in said property, and was made to pay by Penelope W. Teft one-half of all the expenses of the property on the ground that she, complainant, was owner of one-half of said property. It was proved that Charles E. Teft, the survivor of the three brothers, after the death of his brothers, admitted a share and share alike interest with complainant in said property; and the testimony and proofs offered by Darius S. Skinner consisted mostly of declarations made by Penelope W. Teft at different times, denying that complainant had any interest in said property, and saying that she intended to give said property to Skinner when she died; and these declarations were totally at variance with declarations made by her to complainant and her witnesses at other times. Skinner also put in evidence two wills made by Mrs. Teft, one in 1866, the other in 1873, in which wills she professes to give this property to him; and for the purpose of showing that Mrs. Penelope W. Teft, with the knowledge of complainant, asserted title to the property, he put in evidence an agree-

ment made by Penelope W. Teft in 1865 or 1866 to sell the property to certain parties, but which agreement was subsequently rescinded;
428 he also put in evidence certain papers showing that William P. Teft only received from the life insurance money on his brother Henry's life, as his (William's) share of that money, the sum of two thousand one hundred and twenty-three dollars and sixty-three cents, instead of two thousand five hundred dollars, as alleged in the bill.

This appellant, Sarah S. Walden, the complainant in the court below, shows, after consideration of all the exhibits, the bill, answer, and proofs in said cause, the fifth circuit court of the United States for the southern district of Georgia, at the November term, A. D. 1876, of said court, did, on the twentieth day of January, A. D. 1877, during said term of said court, render the following decree:

"This cause came on to be heard at this term upon the bill, answers, exhibits, and proofs, and was argued by counsel; thereupon, upon consideration thereof, it is declared that nothing appears to impeach the title conveyed by the deed from the mayor and aldermen of the city of Savannah to Charles S. Henry, as trustee for Penelope W. Tefft, dated July 19th, 1848, according to its terms, or to encumber the same with any trust, express or implied, in favor of the complainant, or any one else through
429 whom she claims; and thereupon it is ordered, adjudged, and decreed that the injunction heretofore granted in said cause be dissolved, and that the complainant's bill do stand dismissed; and it is further ordered, adjudged, and decreed that the said complainant do pay all the costs of this suit.

"W. B. WOODS, *Judge.*

"JANUARY 20TH, 1877."

Wherefore, inasmuch as the amount involved, and also the value of the interest claimed by said complainant and appellant, Sarah S. Walden, in said lot number five, Monterey ward, and improvements thereon, exceeds the sum of five thousand dollars, this appellant, within the period allowed by law, appeals from the whole of said decree of said circuit court of the United States, and prays that the decree of said circuit court and the bill, answers, pleadings, depositions, evidence, and proceedings in said cause may be sent to the Supreme Court of the United States, and that said Supreme Court will proceed to hear the said cause anew, and that said decree of the said circuit court and every part thereof may be reversed and a decree be made in favor of this appellant, reforming said deed of the mayor and alder-
430 men of Savannah of said lot number five, Monterey ward, so that the same may correctly set forth the trusts and uses contained in said old deed of Elias Fort, made in A. D. 1831; and that the equities of this appellant and her interest in said lot number five and improvements may be allowed and decreed her as prayed for in her bill of complaint, and partition had between her and said Darius S. Skinner, and all her equitable claims for money invested in said real property by her said late husband, William P. Teft, and the taxes, &c., paid by her, as alleged in her bill, may be allowed and decreed, and that a decree may be made in said cause such as to the said Supreme Court may seem proper.

AMOS T. ACKERMAN,
R. R. RICHARDS,
Solicitors for Appellant.

Service acknowledged of the foregoing petition to the Supreme Court in said appeal cause, and copy waived, citation waived, notice admitted, and all further citation and notice waived, this January 30th, A. D. 1877.

A. P. & S. B. ADAMS,
Solicitors for Hardee & Lewis, Executors.

431 We acknowledge service, &c., as above stated, but without admitting that the petition is a correct representation of the case.

JACKSON, LAWTON & BASINGER,
Sol's for Skinner.

And afterwards, to wit, on the 29th day of January, A. D. 1877, came the said complainant, appellant, and filed her appeal bond as follows:

Appeal bond.

STATE OF GEORGIA,
Chatham County:

Know all men by these presents that we, Sarah S. Walden and H. M. Comer, both of said State and county, are held and firmly bound unto Darius S. Skinner, and Charles S. Hardee and John N. Lewis, executors of Charles S. Henry, their and each of their attorney, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated at Savannah, Georgia, this 29th day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

432 Whereas lately, at the November term, 1876, of the fifth circuit court of the United States for the southern district of Georgia, in equity, in a suit depending in said court between Sarah S. Walden, as complainant, and Darius S. Skinner, and Charles S. Hardee and John N. Lewis, executors of Charles S. Henry, a decree (final) was rendered against the said Sarah S. Walden, complainant; and the said Sarah S. Walden, complainant, having obtained and been allowed an appeal to the Supreme Court of the United States, which has been duly filed and served according to law, to reverse the said decree rendered against her in the aforesaid suit in equity, and citation having been duly served, directed to the said Darius S. Skinner, and Charles S. Hardee and John N. Lewis, executors of Charles S. Henry, to be and appear at the next term of the Supreme Court of the United States, to be held at Washington the second Monday in October next:

Now the condition of the above obligation is such that if the said Sarah S. Walden, complainant and appellant, shall prosecute her said appeal to effect, and pay the sum which may be recovered for the

433 use and detention of the lot of land and improvements thereon in the city of Savannah, Georgia, known as lot number five, Monterey ward, and pay the costs of the case, and just damages for delay and costs and interest on the appeal if she shall fail to make her plea good, then the above obligation to be void, else to remain in full force and virtue.

SARAH S. WALDEN. [L. S.]
H. M. COMER. [L. S.]

Signed, sealed, and delivered in the presence of—
LOUIS H. DE MONTMOLLIN,
U. S. Cir. C't Com'r, So. Dist. of Ga.

And approved by—

L. H. DE MONTMOLLIN,
U. S. Com'r, So. Dist. of Ga.

434 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

I, James McPherson, clerk of the circuit court of the United States of America for the fifth circuit and southern district of Georgia, do hereby certify that I have compared the writings annexed to this certificate, and that they are true copies of their respective originals now on file and remaining of record in my office, being a full and complete exemplification of the record, proceedings, and all the evidence in the suit Sarah S. Walden, complainant, and Darius S. Skinner et al., defendants, in said court.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Savannah, in said southern district of Georgia, this sixth day of March, A. D. 1877, and of the Independence of the United States the one hundred and first.

[SEAL.] JAS. McPHERSON, *Clerk.*

(Indorsement on cover:) No. 176. Sarah S. Walden, appellant, vs. Darius S. Skinner, and Charles S. Hardee and John N. Lewis, executors of Charles S. Henry, deceased. S. Georgia C. C. U. S. Filed 3rd September, 1877.

REC. 176—11

STATEMENT, ABSTRACT AND BRIEF FOR APPELLANT.

SUPREME COURT OF THE UNITED STATES.

No. 176.

SARAH S. WALDEN, APPELLANT,

vs.

DARIUS S. SKINNER, AND CHARLES S. HARDEE & JOHN N. LEWIS, EXECUTORS OF CHARLES S. HENRY, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

B. H. HILL & SON,
TOMPKINS & DENMARK,
R. R. RICHARDS,
Counsel for Appellant.

Savannah Morning News Steam
Printing House.

SUPREME COURT OF THE UNITED STATES.

APPEAL FROM THE FIFTH CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF GEORGIA.

SARAH S. WALDEN,
Appellant, and Complainant below,
No. 176. *versus*
DARIUS S. SKINNER, and
CHARLES S. HARDEE, &
JOHN N. LEWIS, *Executors of Chas. S. Henry, deceased, Appellees.*

Bill in Equity for Injunction and relief, heard at November Term, 1876.

Decree for Defendants and Bill dismissed, 20th January, 1877.

STATEMENT OF THE CASE.

The appellant, Sarah S. Walden, respectfully sheweth—That on the sixth day of May, A. D. 1874, she filed her bill in equity in the Fifth Circuit Court of the United States, for the Southern District of Georgia, against the said above named Darius S. Skinner, and against Charles S. Hardee and John N. Lewis, executors of C. S. Henry; and in her said bill alleged that she was a resident of the city of Savannah, State of Georgia, and a citizen of said State, and brought her bill for injunction and relief against said named defendants; the said defendant, Darius S. Skinner, being a citizen of the State of Rhode Island, and the said Charles S. Hardee and John N. Lewis being citizens of the State of Georgia, and executors of the last will and testament of Charles S. Henry, deceased, who in his lifetime was trustee for one Mrs. Penelope W. Tefft and her children. The bill further states that on the twenty-eighth day of October, A. D. 1847, the complainant, Sarah S. Walden, intermarried with one William Pitt Tefft (sometimes known as Wm. P. B. Tefft), and that on the ninth day of August, A. D., 1852, said Wm. P. Teft departed this life intestate, leaving no children, and the complainant, his said wife, his sole heir at law and legal representative. That on the fourth day of June, A. D. (1860) eighteen hundred and sixty, she intermarried with Charles Carroll Walden, who departed this life on the eighth day of December, A. D. 1861, testate, with no living children by complainant, and by will bequeathing and devising unto her all property and rights owned or possessed or to which she had claim or right at the date of her said marriage with said Walden; that the father of her said first husband, said William P. Tefft, was Israel K. Tefft, of Chatham county, Georgia, who died intestate on the thirtieth day of June, A. D. 1862, and that no administration was ever had upon the estate of said Israel K. Tefft, either in Georgia or elsewhere; that the mother of her said first husband was Penelope W. Tefft, wife of said Israel K. Tefft, and who departed this life in Savannah, Georgia, on the eleventh day September, A. D. 1873, testate.

SUPREME COURT OF THE UNITED STATES.

APPEAL FROM THE FIFTH CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF GEORGIA.

SARAH S. WALDEN,
Appellant, and Complainant below,
No. 176. *versus*
DARIUS S. SKINNER, and
CHARLES S. HARDEE, &
JOHN N. LEWIS, *Executors of Chas. S. Henry, deceased, Appellees.*

Bill in Equity for Injunction and relief, heard at November Term, 1876.

Decree for Defendants and Bill dismissed, 20th January, 1877.

STATEMENT OF THE CASE.

The appellant, Sarah S. Walden, respectfully sheweth—That on the sixth day of May, A. D. 1874, she filed her bill in equity in the Fifth Circuit Court of the United States, for the Southern District of Georgia, against the said above named Darius S. Skinner, and against Charles S. Hardee and John N. Lewis, executors of C. S. Henry; and in her said bill alleged that she was a resident of the city of Savannah, State of Georgia, and a citizen of said State, and brought her bill for injunction and relief against said named defendants; the said defendant, Darius S. Skinner, being a citizen of the State of Rhode Island, and the said Charles S. Hardee and John N. Lewis being citizens of the State of Georgia, and executors of the last will and testament of Charles S. Henry, deceased, who in his lifetime was trustee for one Mrs. Penelope W. Tefft and her children. The bill further states that on the twenty-eighth day of October, A. D. 1847, the complainant, Sarah S. Walden, intermarried with one William Pitt Tefft (sometimes known as Wm. P. B. Tefft), and that on the ninth day of August, A. D., 1852, said Wm. P. Teft departed this life intestate, leaving no children, and the complainant, his said wife, his sole heir at law and legal representative. That on the fourth day of June, A. D. (1860) eighteen hundred and sixty, she intermarried with Charles Carroll Walden, who departed this life on the eighth day of December, A. D. 1861, testate, with no living children by complainant, and by will bequeathing and devising unto her all property and rights owned or possessed or to which she had claim or right at the date of her said marriage with said Walden; that the father of her said first husband, said William P. Tefft, was Israel K. Tefft, of Chatham county, Georgia, who died intestate on the thirtieth day of June, A. D. 1862, and that no administration was ever had upon the estate of said Israel K. Tefft, either in Georgia or elsewhere; that the mother of her said first husband was Penelope W. Tefft, wife of said Israel K. Tefft, and who departed this life in Savannah, Georgia, on the eleventh day September, A. D. 1873, testate.

That at the date of complainant's marriage with her said first husband, William P. Tefft, in 1847, there were then living two other children of the said Israel K. and Penelope W. Tefft, the said two other children being brothers of her said first husband, William P. Tefft, and named respectively, Henry Denison Tefft, who died childless, intestate, and a bachelor, on the thirteenth day of August, A. D. 1849; and Charles E. Tefft, who also died childless, intestate, and a bachelor, on the twelfth day of June, A. D. 1853, both being over twenty-one years of age at time of death; that at the date of the death of said Henry Denison Tefft on thirteenth of August, 1849, he had policies of life insurance on his life for five thousand dollars in favor of his two brothers, William P. Tefft and Charles E. Tefft, which said sum was collected in accordance with law and paid over by his administrator, his brother William P. Tefft, to two said remaining brothers, William P. and Charles E.

The bill further states that on the 28th day of June, A. D. 1831, there was executed an original trust deed from one Elias Fort to Charles S. Henry and S. C. Greene, as trustees for said Penelope W. Tefft and her three said sons, William P. Tefft (husband of complainant), Henry D. Tefft and Charles E. Tefft. A copy of the said trust deed is annexed to the bill of complaint, as exhibit B, and is to be found on folios 8 and 9 of the printed record, and is set forth on pages 17, 18, and 19 of this brief. That in and by said trust deed the property therein mentioned (being real estate in Savannah, Georgia), is conveyed to said trustees in trust for the said Penelope and said specified three children; and it is therein declared that said property is for the use of said Penelope W. and her said sons during her lifetime, and after the death of said Penelope for said three sons alone, as tenants in common; and it is thereinafter declared in the third clause, that should said Penelope die without requesting the trustees to sell and dispose of said real estate and join in a conveyance of the same to the purchasers, the proceeds to be reinvested upon the same uses and trusts as aforesaid, to-wit: for the use of the said Penelope W. Tefft and said sons during her lifetime, and after her death for the said sons alone, as tenants in common; then the property was, after the death of said Penelope to be held in trust for said children, until the youngest should become twenty-one years of age, when, upon request of said children, the same was to be sold, and distributed by said trustees to such of said sons as should survive so as to attain the age of twenty-one years.

The bill further states that the said property was sold by the survivor of said trustees, Charles S. Henry and the said Penelope W. and her three sons, for reinvestment during the lifetime of said Penelope, at her request, she joining in the conveyance under the terms of said trust; that said real estate was sold for the sum of twenty-four hundred dollars, on the thirtieth day of July, A. D. 1849, to one John Doyle, as is seen by exhibit E., to the bill as set forth on folios 13, 14 and 15 of printed record, and herein set forth on pages 19 and 20 of this brief; and that the proceeds of said sale, were reinvested in the buildings then erecting upon a certain lot of land in Savannah, Georgia, known as lot No. 5, Monterey ward, which is the lot now in dispute.

It is further shown that said lot No. 5 had been purchased on the nineteenth day of July, A. D. 1848, by Charles S. Henry, who was at that time the surviving trustee (S. C. Greene, the other trustee, being dead), from the city of Savannah, to hold upon the same uses and trusts as were contained in said trust deed from Elias Fort, made as aforesaid on the twenty-eighth day of June, A. D. 1831, that is to say, for said Penelope W. Tefft, during the lifetime of said Penelope, and after her death to said

sons alone, etc.; that Israel K. Tefft, the said husband of said Penelope, and said three sons, each furnished to said trustee, Charles S. Henry, for that purpose, one-fourth of said pupchase money, to-wit: $60 each; the said deed of 19th July, 1848, being set forth as exhibit C of the bill, and is on folios 9, 10 and 11 of printed record, and pages 15, 16, and 17 of this brief.

That not only were said proceeds of said old trust estate under the Elias Fort deed, invested as aforesaid in the buildings erected in 1849, upon said lot in dispute, but that in addition thereto the said two surviving sons, William P. Tefft (husband of appellant), and Charles E. Tefft invested in said buildings upon said lot then erecting upon lot No. 5, the said insurance money of their deceased brother, Henry Denison Tefft, to-wit: about two thousand five hundred dollars each, and that all this money was so paid and invested in said lot and improvements; besides other large sums also in like manner invested by said I. K. Tefft; and that appellant placed in said house, through her said husband, $750 of her own money. All of which sums of money were invested in said premises upon the express belief and understanding and agreement, that the said Charles S. Henry held, and was to hold, said lot and improvements upon the same uses and trusts as were first declared in said old Fort deed made in 1831; and that the title so existed and was taken accordingly by said Charles S. Henry as trustee for them. The whole cost of said lot and buildings being $8,909.41, as shown by the statement of I. K. Tefft on pages 79 and 80 of printed record, and copied on pages 22 and 23 of this brief. Of which said sum $4,279.00 was furnished by the said William P., husband of appellant.

The bill states further that the buildings upon said lot number five, Monterey ward, were completed about the month of January, 1850; that complainant's said husband, William P. Tefft, died on the 9th of August, 1852, and that the remaining son, Charles E. Tefft, died on 12th of June, 1853, and that complainant, Sarah S. Walden, was, and is, as sole heir at law of her husband, Wm. P. Tefft, entitled to an interest in said lot number five and improvements. That from the time of the completion of said buildings in January, 1850, to the death of said Wm. P. Tefft, in 1852, and from his death to the filing of her bill of complaint, the said complainant, Sarah S. Walden, has generally resided upon said lot number five in her character and right as heir-at-law of her said deceased husband, and as part owner of said premises; that her rights as said heir-at-law of her said deceased husband, Wm. P. Tefft, in said premises, was never disputed, but expressly recognized, and no effort was ever made by any person prior to the death of said Penelope W. Tefft, directly or indirectly, to prevent or hinder the said Sarah S. Walden from the free and ample enjoyment of her said interest in said premises; and that after the death of said Israel K. Tefft (husband of said Penelope) said Sarah S. Walden continued to reside upon said premises with said Penelope W. Tefft, until the death of said Penelope, which occurred on the eleventh day of September, A. D. 1873; and said Penelope, during her lifetime made said Sarah S. Walden, pay one-half of all repairs, taxes, insurance, etc., and other expenses of said property, upon the ground that said Sarah S. Walden was equally interested and entitled to said property with said Penelope, and liable, therefore, to bear her proportion of said expenses, and after the death of said Penelope, said Sarah S. Walden paid the whole of said expenses, the amount thereof being set out in an exhibit annexed to her bill of complaint and on p. and p. 42 of printed record.

The bill of complaint further states that on the twenty-eighth d September, A. D. 1872, the said Penelope, while laboring under

many evil influences, and in a low and depressed frame of mind, executed a deed of gift of the whole of said lot number five, Monterey ward, and improvements, to her nephew, Darius S. Skinner, of Rhode Island, aforesaid, to take effect after her (said 'Penelope's) death. A copy of which deed is annexed to the bill as exhibit F. and is on folios 15 and 16 of the printed record, and on pages 14 and 15 of this brief, under which deed of gift the said Darius S. Skinner, immediately after the death of said Penelope, attempted to take possession of the whole of said premises, and eject said Sarah S. Walden therefrom, whereupon she resisted said attempted ouster, whereupon said Dairus S. Skinner first brought an action in the State Court to eject appellant as an intruder, which he abandoned, and afterwards commenced an action of ejectment against her for said premises in the Fifth Circuit Court of the United States for the Southern district of Georgia, which action of ejectment is still pending, and was sought by complainant's bill to be enjoined and disposed of.

The bill further states that the said Sarah S. Walden, against whom said action of ejectment had been so commenced, was prevented from asserting her title and equities in said premises, and was at great disadvantage in defending said action of ejectment for the following reasons and state of facts, to-wit: Because the said trustee, Charles S. Henry, in whom the title to said lot number five, Monterey ward, and improvements, was to be vested, for the benefit of said William P. Tefft (husband of complainant) and the others, had omitted to see that the title was so made, and said title appearing by the deed of conveyance from the city of Savannah to be in the following words, "to Charles S. Henry, trustee of Mrs. Penelope W. Tefft, wife of Israel K. Tefft," without the words, "and her three children, William P. Tefft, Henry D. Tefft, and Charles E. Tefft, during the lifetime of the said Penelope W. Tefft, and after her death to and for said three children alone," and the said deed from the city of Savannah expressing no trust whatever, not even containing words of separate use for said Penelope W. Tefft; and the legal effect of said deed, as it stands, being, under the laws of Georgia, to vest the title of said property absolutely in Israel K. Tefft (husband of said Penelope). In consequence of which mistake in the drafting of said deed of conveyance, and the failure to express the proper trusts as aforesaid, the said Darius S. Skinner would appear in a court of law to have a better title than the said Sarah S. Walden, inasmuch as the said Penelope W. Tefft was sole heir at law of said Israel K. Tefft, and if said deed were to stand unreformed, and the equities of Sarah S. Walden not allowed, the said Penelope W. Tefft would appear to have had the right to give away said entire property to said Darius S. Skinner, in and by said deed made as aforesaid in A. D. 1872; (provided the said deed of P. W. Tefft is not a testamentary paper;) and inasmuch, also, as a court of law could not so perfectly deal with and dispose of the rights of appellant arising from the fact that the said William P. Tefft had contributed the aforesaid large sums of money for the purchase and construction of said improvements upon said lot number five, Monterey ward, which said sums of money had been invested in said property upon the understanding that the same uses and trusts contained in said Elias Fort deed entered into and followed into said lot number five, Monterey ward, and improvements thereon, and became and were equitable charges upon said property which questions could not be asserted at law, or if at all, not so well as in equity, where cases of this kind are more properly cognizable and relievable.

The bill further states that Israel K Tefft, during his lifetime, acknow-

ledged the rights of Sarah S. Walden as heir-at-law of her deceased husband, William P. Tefft, and as part owner of said property, and a letter of said Israel K. Tefft to his son, William P. Tefft, is annexed to the bill of complaint, showing that he considered said money so contributed as having gone into said lot and improvements upon the understanding that the same uses and trusts first contained in the old Elias Fort deed followed and entered into this property ; and further, that Israel K. Tefft was the actual builder of the improvements upon said lot number five, Monterey ward, and managed the same with the consent of said trustee, Charles S. Henry, and contributed to the erection of said improvements, upon the same understanding as to said uses and trusts.

The bill further states that the said Charles S. Henry, trustee as aforesaid, died in the year A. D. 1864, testate, leaving Charles S. Hardee and John N. Lewis as executors of his last will and testament, who qualified as such, and are yet undischarged from their trusts and duties as executors, and who are successors to said Charles S. Henry in said trust created by the facts and circumstances aforesaid, connected with the purchase of said lot number five, Monterey ward, and the erection of said improvements thereon, and the equitable charges aforesaid, in favor of complainant, upon said property.

The bill of complaint finally prays that the said deed of conveyance from the said city of Savannah, as set forth on folios 9, 10 and 11 of the printed record and on pages 15, 16, and 17 of this brief, may be reformed so as to speak the true purposes for which it was purchased as aforesaid, and to include the same uses and trusts as first declared and set forth in the said old trust deed from Elias Fort, according to the understanding and agreement of the parties; and prays that the equities of complainant in and to said property, including the improvements thereon, may be set forth and decreed and allowed by the Court, including such equities as may arise in her favor from her said payment of taxes, insurance, repairs, etc., upon said property during the lifetime and since the death of said Penelope W. Tefft, and that until said deed be so reformed and said equities decreed and allowed to said complainant, that the said Darius S. Skinner be enjoined from further proceeding with his said ejectment suit upon the common law side of said Court; and the bill prays further for such other and further relief as the circumstances of the case require and may seem meet; and prays further that when said deed shall, by the decree of the Court, be so reformed, that the said Charles S. Hardee and John N. Lewis, as executors of said Charles S. Henry, be decreed to perform the trusts devolved upon said Charles S. Henry, had he lived, and that the interests of Darius S. Skinner in said premises be ascertained, as also the interests of Sarah S. Walden, and, when ascertained, that the said property be partitioned between them or divided according to their respective rights and equities.

The bill also alleged that Darius S. Skinner was insolvent; and exhibits are annexed to the bill showing the old Fort trust deed of 1831; the deed from the city of Savannah sought to be reformed; the taxes, etc., paid by complainant; the letter of Israel K. Tefft, showing his understanding of the deed from Savannah, and various other exhibits, showing the truth of the statements in the bill; nearly all of which exhibits are, for the convenience of the Court, substantially set forth in this brief.

The answer (separate) of Darius S. Skinner admits the alleged marriage of Sarah S. Walden to William P. Tefft, and that William died childless and intestate, as alleged in the bill, on August 9, A. D. 1852 ; admits the subsequent marriage with Walden and his death, as alleged in the bill;

admits at the time of his marriage with William P. Tefft, the trusts as in existence, according to the old Elias Fort deed in 1831, and that Charles S. Henry was the surviving trustee, and his death in A. D., 1864; admits the death of each member of the Tefft family as alleged in the bill; the deed of gift from Penelope W. Tefft, in 1872, to Skinner; his subsequent attempt to oust appellant through the State Court, and then his ejectment suit, etc., but says that he claims the whole of said lot No. 5, Monterey ward, and improvements, under his said deed of gift of 28th September, A. D. 1872, from Mrs. P. W. Tefft, and avers that there was no mistake in the deed from Savannah of 19th July, 1848; that it was made as all parties intended it to be made, and avers that the sole ownership of said lot and improvements was in Penelope W. Tefft; admits the erection of the improvements upon said lot No. 5, in 1849, and the sale of the old Fort trust estate, in A. D. 1849, for two thousand four hundred dollars, and avers that if the money went into the improvements upon said lot No. 5, it went in with notice of the title to Mrs. Tefft alone, the deed from the city of Savannah having been recorded; admits that as insurance money on the life of Henry D. Tefft, who died in 1849, after paying expenses of administration, there remained four thousand two hundred and forty-seven dollars and twenty-seven cents, and that William P. Tefft got thereof one-half, and Charles E. Tefft the other half, but denies that William P. Tefft put his half in said improvements upon said lot No. 5. He denies that Sarah S. Walden ever resided upon the premises, except as the guest of Israel K. Tefft and Mrs. Penelope W. Tefft, and he avers that the true and proper construction of the old Fort deed was not to vest any interest in William P. Tefft in said old Fort trust property, but that William died before his mother, Penelope W. Tefft, and before his brother Charles, and by the terms of said old trust deed had no interest in said property, which could descend to his heirs; and he submits that he ought to recover not only the whole of said trust property of Penelope W. Tefft, under the said deed from the city of Savannah, but also mesne profits at the rate of twelve hundred dollars per year since September 11, A. D. 1873, the date of Penelope W. Tefft's death. He also avers that he is Penelope W. Tefft's heir-at-law, if said Penelope had died intestate, but that said Penelope died testate, and that by his will he is the devisee of said lot No. 5, Monterey ward.

The answers of Charles S. Hardee and John N. Lewis, executors of Charles S. Henry, admit from information and belief the matters alleged in the bill, but aver that the Court has no jurisdiction over them, because they are citizens of Georgia, residing therein, and Sarah S. Walden is likewise a citizen of the same State and resides therein.

ADMISSION IN ANSWER OF DARIUS S. SKINNER, TO ALLEGATIONS CONTAINED IN THE BILL.

1. That appellant was married to her first husband, William P. Tefft, son of Israel K. and Penelope W. Tefft, on the 28th October, 1847, and that her said husband died childless and intestate on the 9th August, 1852. And that at the date of said marriage the said husband, William P., the said parents, I. K. and P. W., together with their two other sons, Henry D. Tefft and Charles E. Tefft, were all living together and constituted the whole Tefft family.

2. That appellant was again married to Charles Carroll Walden on 4th June, 1860, and that said Walden died on the 8th December, 1861, without any surviving issue of his marriage.

3. That the four members of the Tefft family, other than William P., departed this life as follows :

Henry D. Tefft on 13th August, 1849.

Charles E. Tefft on 12th June, 1853, (both of said brothers of said Wm. P. dying after they were twenty-one years of age, childless, intestate, and unmarried.)

Israel K. Tefft on 13th June, 1862, (intestate, and that administration has never been taken out on his estate.)

Mrs. Penelope W. Tefft on 11th September, 1873.

4. The answer also admits, in effect, as alleged in the bill, that the two trustees, S. C. Green and Charles S. Henry, died as follows :

Charles S. Henry, on 19th August, 1864.

S. C. Greene, a great many years ago, and sometime before 19th July, 1848, the date of the deed from the city of Savannah to Henry, as trustee for Mrs. P. W. Tefft.

5. The answer of Skinner also admits that when apellant married her first husband, Wm. P. Tefft, in 1847, there was a trust estate existing for the said Penelope W. Tefft, and her said three sons, in lot 23, Warren ward, in Savannah, held by the said trustees, Henry and Green, under the deed from Elias Fort, made 28th June, 1831. (See pages 8 and 9 of printed record.) And the said appellee also admits the conveyance of the lot in dispute, No. 5, Monterey ward, from the city of Savannah to said Henry, as trustee for Mrs. P. W. Tefft, on 19th July, 1848. (See printed record, pages 9, 10, and 11.) This last admission is qualified, however, by the assertion that the deed from the city vested the title in the trustee for the sole and separate use of the said Mrs. P. W. Tefft, "the trust being executory only so long and for such time as the said *cestui que trust* should remain a *feme covert*." (The proper construction as placed u by appellant is found on pages ~~35 and 36~~ of this brief.) 31

6. The answer of Skinner further admits that the improve lot No. 5 were commenced in 1849, and that the Fort property was sold on 30th July, 1849, for $2,400, by C. S. Henry, surviving trustee, to one John Doyle, and that Mrs. Tefft and her three sons joined in the deed to Doyle. (See printed record, pages 13, 14, and 15.)

7. The said answer of Skinner does not deny that the $2,400, realized from the sale of the Fort property to John Doyle, went into the premises then being erected on the lot in dispute, No. 5, Monterey ward. (See page 24, m. page 60, printed record.)

8. Answer of Skinner also admits that I. K. Tefft asked his two sons, Wm. P. and Charles E., for the money coming to them from the estate of their brother Henry. (See page 25, m. page 62 printed record.) This is a most important concession, for the allegation thus admitted, as set forth in the bill on page 3, m. page 8 of printed record, is founded largely on the letter of I. K. Tefft, on pages 12 and 13, and again on pages 75, (m. pages 30 to 32, and again on m. pages 202 to 204 of printed record.) To admit the letter, as is virtually done, is to admit the whole case contended for by appellant, especially as Israel K. Tefft admitted always, to numerous persons, the truth of the statements made in this letter, as shown by the evidence of the family physician, Dr. R. D. Arnold, on page 55, sixth answer printed record.

(*b*) Testimony of Mrs. Montmollin and Mrs. Palin, on page 45, m. page 114.

(*c*) Testimony of Mrs. Lewis, on page 49, m. page 125, fifth answer.

(*d*) Testimony of Wm. Rogers, on page 50, m. page 125.

(*e*) Testimony of Mrs. Henry, on page 64, m. page 168, sixth answer.

admits at the time of his marriage with William P. Tefft, the trusts as in existence, according to the old Elias Fort deed in 1831, and that Charles S. Henry was the surviving trustee, and his death in A. D., 1864; admits the death of each member of the Tefft family as alleged in the bill; the deed of gift from Penelope W. Tefft, in 1872, to Skinner; his subsequent attempt to oust appellant through the State Court, and then his ejectment suit, etc., but says that he claims the whole of said lot No. 5, Monterey ward, and improvements, under his said deed of gift of 28th September, A. D. 1872, from Mrs. P. W. Tefft, and avers that there was no mistake in the deed from Savannah of 19th July, 1848; that it was made as all parties intended it to be made, and avers that the sole ownership of said lot and improvements was in Penelope W. Tefft; admits the erection of the improvements upon said lot No. 5, in 1849, and the sale of the old Fort trust estate, in A. D. 1849, for two thousand four hundred dollars, and avers that if the money went into the improvements upon said lot No. 5, it went in with notice of the title to Mrs. Tefft alone, the deed from the city of Savannah having been recorded; admits that as insurance money on the life of Henry D. Tefft, who died in 1849, after paying expenses of administration, there remained four thousand two hundred and forty-seven dollars and twenty-seven cents, and that William P. Tefft got thereof one-half, and Charles E. Tefft the other half, but denies that William P. Tefft put his half in said improvements upon said lot No. 5. He denies that Sarah S. Walden ever resided upon the premises, except as the guest of Israel K. Tefft and Mrs. Penelope W. Tefft, and he avers that the true and proper construction of the old Fort deed was not to vest any interest in William P. Tefft in said old Fort trust property, but that William died before his mother, Penelope W. Tefft, and before his brother Charles, and by the terms of said old trust deed had no interest in said property, which could descend to his heirs; and he submits that he ought to recover not only the whole of said trust property of Penelope W. Tefft, under the said deed from the city of Savannah, but also mesne profits at the rate of twelve hundred dollars per year since September 11, A. D. 1873, the date of Penelope W. Tefft's death. He also avers that he is Penelope W. Tefft's heir-at-law, if said Penelope had died intestate, but that said Penelope died testate, and that by his will he is the devisee of said lot No. 5, Monterey ward.

The answers of Charles S. Hardee and John N. Lewis, executors of Charles S. Henry, admit from information and belief the matters alleged in the bill, but aver that the Court has no jurisdiction over them, because they are citizens of Georgia, residing therein, and Sarah S. Walden is likewise a citizen of the same State and resides therein.

ADMISSION IN ANSWER OF DARIUS S. SKINNER, TO ALLEGATIONS CONTAINED IN THE BILL.

1. That appellant was married to her first husband, William P. Tefft, son of Israel K. and Penelope W. Tefft, on the 28th October, 1847, and that her said husband died childless and intestate on the 9th August, 1852. And that at the date of said marriage the said husband, William P., the said parents, I. K. and P. W., together with their two other sons, Henry D. Tefft and Charles E. Tefft, were all living together and constituted the whole Tefft family.

2. That appellant was again married to Charles Carroll Walden on 4th June, 1860, and that said Walden died on the 8th December, 1861, without any surviving issue of his marriage.

3. That the four members of the Tefft family, other than William P., departed this life as follows :

Henry D. Tefft on 13th August, 1849.

Charles E. Tefft on 12th June, 1853, (both of said brothers of said Wm. P. dying after they were twenty-one years of age, childless, intestate, and unmarried.)

Israel K. Tefft on 13th June, 1862, (intestate, and that administration has never been taken out on his estate.)

Mrs. Penelope W. Tefft on 11th September, 1873.

4. The answer also admits, in effect, as alleged in the bill, that the two trustees, S. C. Green and Charles S. Henry, died as follows :

Charles S. Henry, on 19th August, 1864.

S. C. Greene, a great many years ago, and sometime before 19th July, 1848, the date of the deed from the city of Savannah to Henry, as trustee for Mrs. P. W. Tefft.

5. The answer of Skinner also admits that when apellant married her first husband, Wm. P. Tefft, in 1847, there was a trust estate existing for the said Penelope W. Tefft, and her said three sons, in lot 23, Warren ward, in Savannah, held by the said trustees, Henry and Green, under the deed from Elias Fort, made 28th June, 1831. (See pages 8 and 9 of printed record.) And the said appellee also admits the conveyance of the lot in dispute, No. 5, Monterey ward, from the city of Savannah to said Henry, as trustee for Mrs. P. W. Tefft, on 19th July, 1848. (See printed record, pages 9, 10, and 11.) This last admission is qualified, however, by the assertion that the deed from the city vested the title in the trustee for the sole and separate use of the said Mrs. P. W. Tefft, "the trust being executory only so long and for such time as the said *cestui que trust* should remain a *feme covert*." (The proper construction as placed upon this deed by appellant is found on pages ~~35 and 36~~ of this brief.) 37, 38, 39 x40

6. The answer of Skinner further admits that the improvements on said lot No. 5 were commenced in 1849, and that the Fort property was sold on 30th July, 1849, for $2,400, by C. S. Henry, surviving trustee, to one John Doyle, and that Mrs. Tefft and her three sons joined in the deed to Doyle. (See printed record, pages 13, 14, and 15.)

7. The said answer of Skinner does not deny that the $2,400, realized from the sale of the Fort property to John Doyle, went into the premises then being erected on the lot in dispute, No. 5, Monterey ward. (See page 24, m. page 60, printed record.)

8. Answer of Skinner also admits that I. K. Tefft asked his two sons, Wm. P. and Charles E., for the money coming to them from the estate of their brother Henry. (See page 25, m. page 62 printed record.) This is a most important concession, for the allegation thus admitted, as set forth in the bill on page 3, m. page 8 of printed record, is founded largely on the letter of I. K. Tefft, on pages 12 and 13, and again on pages 75, (m. pages 30 to 32, and again on m. pages 202 to 204 of printed record.) To admit the letter, as is virtually done, is to admit the whole case contended for by appellant, especially as Israel K. Tefft admitted always, to numerous persons, the truth of the statements made in this letter, as shown by the evidence of the family physician, Dr. R. D. Arnold, on page 55, sixth answer printed record.

(*b*) Testimony of Mrs. Montmollin and Mrs. Palin, on page 45, m. page 114.

(*c*) Testimony of Mrs. Lewis, on page 49, m. page 125, fifth answer.

(*d*) Testimony of Wm. Rogers, on page 50, m. page 125.

(*e*) Testimony of Mrs. Henry, on page 64, m. page 168, sixth answer.

(*f*) Testimony of James Johnson, on page 70, sixth answer.

(*g*) Testimony of M. J. Habersham, colored, on page 83, m. page 222, seventh answer.

9. The answer of Skinner does not deny that he is insolvent, as set forth in the bill, page 5 m., page 13 of printed record.

10. The said answer also admits that appellee, Skinner, brought an action against the appellant to eject her as an intruder, under the Code of Georgia, which action was abandoned, and that he afterwards commenced the action of ejectment in the Circuit Court of the United States, claiming mesne profits at rate of $1,200 per annum, which last action is still pending.

DENIALS OF SKINNER TO ALLEGATIONS IN THE BILL OF APPELLANT.

FIRST.

The answer of Skinner denies, as is alleged by appellant, that there was a mistake in the form of the deed from the city to C. S. Henry, trustee, and denies that it is proper to reform such deed so as to make it conform to the provisions of the deed from Elias Fort to trustees for Mrs. Tefft and her three children, of 28th June, 1831.

That the trust in the Fort deed should have been engrafted on the deed from the city to the lot in dispute, is conclusively shown by the testimony for appellant, as follows :

1. The testimony of appellant, as shown on pages 39, 40, and 41 m., pages 96 to 102, inclusive, of printed record, and exhibits to her additional testimony on pages 75 to 80, inclusive.

2. Testimony of C. D. C. Rhind, on page 42 m., pages 103 and 104 printed record.

3. The testimony of Mrs. H. M. R. Montmollin, on pages 45 and 46 m., pages 115 to 118, inclusive, printed record.

4. Testimony of Mrs. Caroline Palin, on same pages as that of Mrs. Montmollin.

5. Testimony of Mrs. Frances S. Lewis (sister of the trustee, Judge C. S. Henry), on pages 41 and 49 m., pages 121 to 125, inclusive, printed record.

6. Testimony of Wm. Rogers, on page 50 m., page 128 of printed record.

7. Testimony of Miss Georgia Thompson, on page 52 m., page 133 printed record.

8. Testimony of Dr. R. D. Arnold, on pages 54 and 55 m., page 131 printed record.

9. Testimony of George Nutal (colored), on page 57 m., page 147 printed record.

10. Testimony of Mrs. J. M. Cass, on pages 58 and 59 m., page 153 printed record.

11. Testimony of Mrs. Sarah R. Henry, widow of the trustee, C. S. Henry, on pages 63, 64, 65 and 66 m., pages 167 to 174, inclusive, printed record.

12. Testimony of Joseph Johnson, on pages 70 and 71 m., pages 187 to 190, inclusive, printed record.

13. Testimony of Monday J. Habersham (colored), on pages 83 and 84 m., pages 220 to 225, inclusive, printed record.

14. Testimony of W. E. Doane, on pages 86, 87 and 88 m., pages 230 to 234, inclusive, printed record.

15. Testimony of Mrs. Elizabeth A. Doane, on pages 89, 90 and 91 m., pages 239 to 243, inclusive, printed record.

16. The power of attorney from children of I. K. and P. W. Tefft to C. S. Henry, trustee (on pages 91 and 92 of printed record), authorizing sale of Fort property on St. Julian street, and on page 21 of this brief. Attention is specially called to the fact, that the lot now in dispute, No. 5, Monterey ward, on corner of Jones and Bull streets, was purchased several months before this power of attorney was executed, to-wit: on 19th of July, 1848, and that the Fort property, on St Julian street, was sold on the 13th of July, 1849, less than two months after the power of attorney was given, and about a year after the lot in dispute was purchased from the city. This goes to prove appellant's allegations, that the lot was purchased from the city by I. K. Tefft and his three sons in *contemplation* of selling the old house and re-investing in a new home for the Tefft family.

17. The declarations of trust and admission contained in the letter of I. K. Tefft to his son Wm. P. Tefft, on page 12 and 13, and again on page 75 printed record, pages 21 and 22 of this brief.

18. The reservations as to remaining in the house, and as to removal of plants, etc., by Mrs. Tefft from garden of Fort property, as set forth in deed to John Doyle, on pages 14 and 15 m., pages 37 and 38 printed record, page 20 of this brief.

Against this strong and unbroken array of testimony for appellant, on this question of the trust being engrafted on the deed to the lot in dispute, the appellee, Skinner, interposed nothing but statements of Mrs. P. W. Tefft, alleged to have been made to him and several other persons, during her life, viz:

1. Testimony of appellee, Skinner, on pages 99 to 104 m., pages 270 to 283, inclusive, printed record.

2. Testimony of Mrs. Henrietta Skinner (wife of D. S. Skinner) on page 104 m., page 285 printed record.

3. Testimony of Andrew M. Ross (one of the executors of Mrs. P. W. Tefft), on pages 116 and 117 m., page 323 printed record.

4. Testimony of Mrs. M. J. Ross (wife of Andrew J. Ross), on page 118 m., page 329 printed record.

5. Testimony of Miss M. B. Hunter (legatee under the will of Mrs. Tefft), on page 120 m., page 336 printed record.

6. Testimony of Wm. S. Basinger, (of counsel for appellee Skinner, and one of the executors of P. W. Tefft's will,) on pages 122 to 126 inclusive, m., pages 340, 341 printed record.

7. Testimony of Edward C. Mathews (colored), on pages 132 and to 134, inclusive, m., pages 374, 6th answer, and 375, 1st answer to cross.

8. James B. Matthews (colored), pages 134 and 135 m., page 381 printed record.

The witnesses for defendant, Robert Erwin, Mary R. Alexander (colored), Edward F. Neufville (the receiver in this case), and James Hunter did not testify on this point.

Then, besides the documentary proofs, there were fifteen witnesses for appellant, fourteen without any interest in the case, who swear to the various facts and statements made by Mrs. P. W. Tefft and all the other members of the family as to the trusts under which the lot in dispute was purchased and the buildings thereon erected. The eight witnesses for appellee, Skinner, who swear on this point, only state what Mrs. P. W. Tefft alone said, and thereby contradict the testimony of the appellant and her witnesses solely as to the statements of Mrs. P. W. Tefft. Not a word of all that the other members of the family and the trustee are re-

(*f*) Testimony of James Johnson, on page 70, sixth answer.

(*g*) Testimony of M. J. Habersham, colored, on page 83, m. page 222, seventh answer.

9. The answer of Skinner does not deny that he is insolvent, as set forth in the bill, page 5 m., page 13 of printed record.

10. The said answer also admits that appellee, Skinner, brought an action against the appellant to eject her as an intruder, under the Code of Georgia, which action was abandoned, and that he afterwards commenced the action of ejectment in the Circuit Court of the United States, claiming mesne profits at rate of $1,200 per annum, which last action is still pending.

DENIALS OF SKINNER TO ALLEGATIONS IN THE BILL OF APPELLANT.

FIRST.

The answer of Skinner denies, as is alleged by appellant, that there was a mistake in the form of the deed from the city to C. S. Henry, trustee, and denies that it is proper to reform such deed so as to make it conform to the provisions of the deed from Elias Fort to trustees for Mrs. Tefft and her three children, of 28th June, 1831.

That the trust in the Fort deed should have been engrafted on the deed from the city to the lot in dispute, is conclusively shown by the testimony for appellant, as follows :

1. The testimony of appellant, as shown on pages 39, 40, and 41 m., pages 96 to 102, inclusive, of printed record, and exhibits to her additional testimony on pages 75 to 80, inclusive.

2. Testimony of C. D. C. Rhind, on page 42 m., pages 103 and 104 printed record.

3. The testimony of Mrs. H. M. R. Montmollin, on pages 45 and 46 m., pages 115 to 118, inclusive, printed record.

4. Testimony of Mrs. Caroline Palin, on same pages as that of Mrs. Montmollin.

5. Testimony of Mrs. Frances S. Lewis (sister of the trustee, Judge C. S. Henry), on pages 41 and 49 m., pages 121 to 125, inclusive, printed record.

6. Testimony of Wm. Rogers, on page 50 m., page 128 of printed record.

7. Testimony of Miss Georgia Thompson, on page 52 m., page 133 printed record.

8. Testimony of Dr. R. D. Arnold, on pages 54 and 55 m., page 131 printed record.

9. Testimony of George Nutal (colored), on page 57 m., page 147 printed record.

10. Testimony of Mrs. J. M. Cass, on pages 58 and 59 m., page 153 printed record.

11. Testimony of Mrs. Sarah R. Henry, widow of the trustee, C. S. Henry, on pages 63, 64, 65 and 66 m., pages 167 to 174, inclusive, printed record.

12. Testimony of Joseph Johnson, on pages 70 and 71 m., pages 187 to 190, inclusive, printed record.

13. Testimony of Monday J. Habersham (colored), on pages 83 and 84 m., pages 220 to 225, inclusive, printed record.

14. Testimony of W. E. Doane, on pages 86, 87 and 88 m., pages 230 to 234, inclusive, printed record.

15. Testimony of Mrs. Elizabeth A. Doane, on pages 89, 90 and 91 m., pages 239 to 243, inclusive, printed record.

16. The power of attorney from children of I. K. and P. W. Tefft to C. S. Henry, trustee (on pages 91 and 92 of printed record), authorizing sale of Fort property on St. Julian street, and on page 21 of this brief. Attention is specially called to the fact, that the lot now in dispute, No. 5, Monterey ward, on corner of Jones and Bull streets, was purchased several months before this power of attorney was executed, to-wit: on 19th of July, 1848, and that the Fort property, on St Julian street, was sold on the 13th of July, 1849, less than two months after the power of attorney was given, and about a year after the lot in dispute was purchased from the city. This goes to prove appellant's allegations, that the lot was purchased from the city by I. K. Tefft and his three sons in *contemplation* of selling the old house and re-investing in a new home for the Tefft family.

17. The declarations of trust and admission contained in the letter of I. K. Tefft to his son Wm. P. Tefft, on page 12 and 13, and again on page 75 printed record, pages 21 and 22 of this brief.

18. The reservations as to remaining in the house, and as to removal of plants, etc., by Mrs. Tefft from garden of Fort property, as set forth in deed to John Doyle, on pages 14 and 15 m., pages 37 and 38 printed record, page 20 of this brief.

Against this strong and unbroken array of testimony for appellant, on this question of the trust being engrafted on the deed to the lot in dispute, the appellee, Skinner, interposed nothing but statements of Mrs. P. W. Tefft, alleged to have been made to him and several other persons, during her life, viz:

1. Testimony of appellee, Skinner, on pages 99 to 104 m., pages 270 to 283, inclusive, printed record.

2. Testimony of Mrs. Henrietta Skinner (wife of D. S. Skinner) on page 104 m., page 285 printed record.

3. Testimony of Andrew M. Ross (one of the executors of Mrs. P. W. Tefft), on pages 116 and 117 m., page 323 printed record.

4. Testimony of Mrs. M. J. Ross (wife of Andrew J. Ross), on page 118 m., page 329 printed record.

5. Testimony of Miss M. B. Hunter (legatee under the will of Mrs. Tefft), on page 120 m., page 336 printed record.

6. Testimony of Wm. S. Basinger, (of counsel for appellee Skinner, and one of the executors of P. W. Tefft's will,) on pages 122 to 126 inclusive, m., pages 340, 341 printed record.

7. Testimony of Edward C. Mathews (colored), on pages 132 and to 134, inclusive, m., pages 374, 6th answer, and 375, 1st answer to cross.

8. James B. Matthews (colored), pages 134 and 135 m., page 381 printed record.

The witnesses for defendant, Robert Erwin, Mary R. Alexander (colored), Edward F. Neufville (the receiver in this case), and James Hunter did not testify on this point.

Then, besides the documentary proofs, there were fifteen witnesses for appellant, fourteen without any interest in the case, who swear to the various facts and statements made by Mrs. P. W. Tefft and all the other members of the family as to the trusts under which the lot in dispute was purchased and the buildings thereon erected. The eight witnesses for appellee, Skinner, who swear on this point, only state what Mrs. P. W. Tefft alone said, and thereby contradict the testimony of the appellant and her witnesses solely as to the statements of Mrs. P. W. Tefft. Not a word of all that the other members of the family and the trustee are re-

ported to have said is in any particular contradicted. Beyond all these proofs is to be considered the continued residence of the appellant at the South, and in the house with Mrs. P. W. Tefft, except for eighteen months, when she was married to Mr. Walden, and for a time during the war, when the house was rented. Remaining in Savannah, childless, widowed, with all her relatives in Rhode Island, living with a querulous old woman, with whom she was constantly disagreeing, and in a house to which she had no sort of claim! It is absurd to believe so.

Yet to the court below there appeared nothing in the proofs to impeach the title conveyed by the deed of the city of Savannah to Henry as trustee, "or to encumber the same with any trusts, expressed or implied, in favor of the complainant, or any one else through whom she claims."

SECOND.

The answer of appellee, Skinner, denies that the money paid for the lot in dispute to the city, it being $240, and $1 for increase, as recited in the deed of 19th July, 1848 (pages 9, 10 and 11 of printed record and pages 15, 16, and 17 of this brief), was paid in whole or in part by the children of I. K. and P. W. Tefft, or in the nature of a trust fund for said children.

But the appellee neglected to introduce any proof of his denial, except the testimony of himself and wife, of the statements of Mrs. P. W. Tefft, (as see page 99 m. page 270, answer 2nd, and page 104 m. page 285 of printed record.)

To sustain her allegations on this point, appellant introduced as positive proof:

1. Testimony of appellant, on page 41 m. page 100 printed record.
2. Testimony of Mrs. Montmollin, on page 45 m. page 114 printed record.

Mrs. Walden swears: "The said lot was purchased by said I. K. Tefft and his three sons, who paid equally for the same to the city of Savannah." * * * * "The said lot No. 5 was purchased and paid for by I. K. Tefft and his said three sons, as stated in the sixth interrogatory." Mrs. Montmollin swears: "I was at the old home when Judge Henry called to get the money to pay for the new lot, No. 5, Monterey ward. Mr. I. K. Tefft and his three sons each paid sixty ($60) dollars to Judge Henry."

In addition to this there is, upon the same point:

3. Testimony of Mr. Wm. E. Doane, on page 86 m. pages 231 and 232. Answer to fourth interrogatory.
4. Testimony of Mrs. E. A. Doane, on page 89 m. page 240. Answer to fourth interrogatory.

This testimony of Mr. and Mrs Doane is especially to be considered as coming from a highly respectable lady and gentleman, totally disinterested, and who, by boarding in the house with Mrs. P. W. Tefft for a long time, became fully cognizant of her knowledge and statements concerning the rights of appellant.

THIRD.

The appellee, Skinner, also denies that the life insurance money of Henry D. Tefft netted $4,800.00, as alleged in the bill; but admits that it did yield $4,247.27, and that this amount was equally divided between his surviving brothers, Wm. P. Tefft, first husband of appellant, and Chas. E. Tefft. Appellee also denies that any of the portion of Wm. P. Tefft in this fund ever went into the house erected on the lot in dispute. Appellee,

however, neglects to prove his denial except by his own statements of what Mrs. P. W. Tefft told him in her lifetime. See page 100 m. page 273 printed record. To this statement of Skinner, appellant opposes the following proofs:

1. Testimony of appellee herself, page 40 m. page 99 printed record.
2. Testimony of C. D. C. Rhind, page 42 m. page 105 printed record.
3. Testimony of Mrs. Montmollin, page 45 m. page 113 printed record.
4. Testimony of Mrs. Palin, page 45 m. page 113 printed record.
5. Testimony of Mrs. Lewis, pages 48 and 49 m. pages 122 and 125 printed record, fifth answer.
6. Testimony of Wm. Rogers, page 50 m. pages 128 and 129 printed record.
7. Testimony of Dr. Arnold, page 55 m. page 140, sixth answer, and 142, ninth answer, printed record. (Note particularly the ninth answer of Dr. Arnold.)
8. Testimony of Mrs. Henry, page 64 m. page 168 printed record.
9. Testimony of Joseph Johnson, page 70 m. pages 187, '8 and '9 printed record.
10. Testimony of Wm. E. Doane, page 86 m. page 231 and 232, fourth answer, printed record.
11. Testimony of Mrs. Doane, page 89 m. page 240 printed record.
12. Also, see the letter of I. K. Tefft to his son Wm. P. Tefft, of 6th of September, 1849, on page 75 of printed record—which is impliedly admitted to be true in the answer of D. S. Skinner; see page 25 m. page 62 printed record.

In this letter, m. page 203, Mr. Tefft wrote: "Now, what I desire of you and Charley is, that the money you have received from your brother Henry, you will give me to put into our new house." Also, compare what is said just above: "Your brother Henry promised to purchase the marble mantles for the house," with what Mrs. Henrietta Skinner says in her testimony, page 105 printed record: "I heard Henry tell my husband that he intended to buy and present to his mother some marble mantles, etc." Henry Tefft died August 13th, 1849.

FOURTH.

The appellee, Skinner, does not, in so many words, deny that the sum of seven hundred and fifty dollars, belonging to appellant, went into the premises erected on said lot, but does in effect make such denial. (See printed record, page 26; m. page 63.)

Appellee, Skinner, also fails to disprove the allegation of appellant as to the $750.00, except by the usual statement derived from what he says Mrs. P. W. Tefft told him.

Opposed to this is the following:

1. Testimony of appellant page 41 m. page 99 printed record.
2. Testimony of Mrs. Montmollin, page 45 m. page 113 printed record.
3. Testimony of Mrs. Palin, page 45 m. page 113 printed record.
4. Testimony of William Rogers, page 50 m. pages 128 and 129, sixth answer, printed record.
5. Testimony of George Nutal, page 57 m. page 147, sixth answer, printed record.
6. Testimony of M. J. Habersham, page 83 m. page 221, fifth answer, printed record.
7. Testimony of William E. Doane, page 86 m. page 232 printed record.
8. Testimony of Mrs. Doane, page 89 m. page 240 printed record.

FIFTH.

The appellee, Skinner, also denies that the appellant ever resided upon the premises in dispute otherwise than as a guest; while the allegation of the bill is that she resided there as at her home. As usual, Skinner substantiates this denial mainly by the reported sayings of Mrs. P. W. Tefft. Opposed to this, and as establishing her allegation, appellant introduced the following:

1. Testimony of appellant, page 41 m. pages 100 and 101, eighth answer, printed record.
2. Testimony of C. D. C. Rhind, page 44 m. page 110 printed record.
3. Testimony of Mrs. Montmollin, page 46 m. page 115 printed record.
4. Testimony of Mrs. Palin, page 46 m. page 115 printed record.
5. Testimony of Mrs. Lewis, page 48 m. page 123 printed record.
6. Testimony of Wm. Rogers, page 50 m. page 129, eighth answer, printed record.
7. Testimony of Miss Thompson, page 52 m. pages 133 and 134, eighth answer, printed record.
8. Testimony of Dr. Arnold, page 55 m. pages 141 and 142, eighth answer, printed record.
9. Testimony of Geo. Nutal, page 57 m. page 147, sixth answer, printed record.
10. Testimony of Mrs. Cass, pages 58 and 59 m. page 153, eighth answer, printed record.
11. Testimony of Mrs Henry, page 94 m. page 169, eighth answer, printed record.
12. Testimony of M. J. Habersham, pages 82 and 83 m. pages 219 and 220 printed record.
13. Testimony of Wm. E. Doane, page 86 m. page 231, fourth answer, printed record.
14. Testimony of Mrs. Doane, page 89 m. page 240, fourth answer, printed record.

And of Skinner's proofs calls attention to:

15. Testimony of Robt. Erwin, page 128 m. page 361, third answer, printed record.
16. Testimony of Ann Rose Alexander, page 130, m. page 367, second answer, printed record.
18. Testimony of A. M. Ross, page 116 m. page 322, fifth answer, printed record.

Also, in the letters attached by D. S. Skinner as exhibits to his answers, Mrs. P. W. Tefft constantly speaks of Sarah (meaning the appellant). In exhibit B., on page 106, printed record, eleventh line from bottom, she says, writing from Savannah to Skinner, who was in Rhode Island, 2d January, 1863: "Sarah is at a private boarding house, etc." In exhibit C, page 107 m. page 294, she says, writing from Savannah to Skinner in Rhode Island: "If I die before the war is over, all will go to my nearest blood relation in the Confederacy, and you know that (is) Sarah," etc. Lower down in the same letter she says: "Sarah is teaching in a family in the country," etc. At that time they were not occupying the house, as, in the same letter, Mrs. Tefft says, "I am boarding at the Pulaski House," etc. In exhibit D, on page 107, printed record, which is undated, but stated by Skinner to have been received 23d July, 1864, Mrs. Tefft says: "It is so long since I have heard from you, and have so often written you that I am quite discouraged, and would think you were dead, only Sarah hears from her sisters at times," etc. In exhibit E, written 2d February,

1865, on page 108 m. page 298 of printed record, Mrs. Tefft says: "Sarah is in the house with me," etc.

SIXTH.

The will of appellant's second husband, Charles Carroll Walden, is neither admitted nor denied by appellee, Skinner. But it is fully proven by a certified copy from the Court of Ordinary, set forth on pages 92 and 93 m. pages 249 to 251 of printed record.

SEVENTH.

It is scarcely necessary to advert to the value of the property in dispute, but if it should be touched upon, it is proven to be worth more than twelve thousand dollars ($12,000). See affidavits of file in this court, and testimony of Robert Erwin, page 128 m. page 360 printed record, and letter of Mrs. P. W. Tefft, printed record, top page 112 m. page 310. "I may, after all, rent my house, if I cannot sell it to advantage and for good securities. Twenty thousand is the price, and if I have to sell it for greenbacks, they have so depreciated that it will be only fifteen thousand in gold. It cost seventeen thousand. I have all the bills and expenses." Also, by the allegations in the bill not denied by the answer.

VALUE OF EVIDENCE FOR APPELLEE. SKINNER.

The true value of the testimony of the several witnesses for Skinner is shown by the following considerations :

1. Andrew M. Ross and his wife.

Ross was left as co-executor with defendant's counsel, Wm. S. Basinger, Esq., and it was at his house it was thought necessary to have Mrs. Tefft, rather than at her own, when she gave instructions as to the pretended deed to Skinner and the will. (See testimony of Wm. S. Basinger, p. 122 m., p. 341 printed record.) And it is to be noted that both Ross and his wife covertly attempt to deny the settling the tenor of these papers at their house by their replies to the question on p. 115 m., 319 printed record. It was asked by appellant's counsel if they were not "drawn up" at their house by Mr. Basinger. Ross replies, on p. 117 m., p. 325 : "The deed and will referred to were not drawn up at my house, nor was any deed or will of Mrs. Tefft's drawn up at my house." Mrs. Ross answers, p. 119 m. p. 330 printed record : "The deed and will referred to, nor either of them, were drawn up in my house."

2. Miss Hunter had a dispute with appellant about the property as long ago as 1854. See her testimony, p. 120 m., pp. 335 and 336 printed record.

3. Ann Rose Alexander (colored), was turned away from the house by Mrs. Walden. See p. 130 m. p. 367 printed record.

4. Edward C. Matthews and his brother James B. Matthews (colored) were to be provided for "through Mr. Skinner," if he got the house and lot. (See p. 133 m. p. 375 printed record.) And they both were strongly on Skinner's side. (See p. 133 m. p. 378 printed record, p. 134 m. p. 381, eighth answer, printed record.)

And the testimony of Mr. and Mrs. Doane very clearly exhibits the relations of the Ross's with Mrs. Tefft. See page 87 m. p. 233, seventh answer, and p. 90 m. p. 242, seventh answer, printed record

DOCUMENTARY PROOFS SPECIALLY TO BE REFERRED TO.

FIRST.

Abstract from the Will of Mrs. P. W. Tefft on page 7 of printed record, is substantially as follows:

GEORGIA: I, Penelope W. Tefft, widow, of the city of Savannah, county of Chatham, and State aforesaid, being of sound and disposing mind and memory, do make and publish this my last will and testament, hereby expressly revoking and making null and void all former last wills and testaments heretofore by me at any time made.

1. I do hereby ratify and confirm the following gifts and conveyances heretofore made by me, according to the terms thereof, whether made orally or in writing, viz.: The gift of the library of Israel K. Tefft, my late husband, to The Georgia Historical Society; the gift of my household and kitchen furniture to my daughter-in-law, Mrs. Sarah F. Walden; the conveyance, of even date with this will, of my house and lot, number five (5), Monterey ward, in the city of Savannah, to my nephew, Darius S. Skinner, of Providence, Rhode Island, in trust for myself during my life, with the remainder in fee simple to my said nephew. * * *

The above bequest to Mrs. Walden I make upon the express condition that she relinquish and surrender all claims, real or imaginary, that she may have against the estate of my late husband, or against myself, or may suppose herself to have, which condition I impose because I have some reason to believe that my said daughter-in-law is under an impression that she has some claim of some sort, though I am convinced she has none whatever of any sort. Should my said daughter-in-law decline to accept the said bequest upon that condition, then I direct my said executors, if she shall continue so to decline for twelve months from the date of their letters testamentary, to pay the same to my nephew, Darius S. Skinner, above named.

3. I nominate and appoint my friends, Andrew M. Ross and William S. Basinger, of Savannah, aforesaid, to be the executors of this my last will and testament, either of whom, if the other shall fail to be qualified, shall exercise all the powers hereby conferred upon both.

In testimony whereof I, the said Penelope W. Tefft, have hereunto set my hand and seal, at Savannah aforesaid, this twenty-eighth day of September, eighteen hundred and seventy-two.

PENELOPE W. TEFFT. [SEAL.]

Signed, sealed, published, and declared by the said Penelope W. Tefft, in conformity with law.

SECOND.

Conveyance from Mrs. Penelope W. Teft to Darius S. Skinner, on pages 15 and 16, printed record.

GEORGIA: This indenture, made the twenty-eighth day of September, eighteen hundred and seventy-two, between Penelope W. Tefft, of Savannah, in the State of Georgia, of the first part, and Darius S. Skinner, of Providence, in the State of Rhode Island, of the second part, witnesseth: That the said party of the first part, being of great age and feeble health, and desirous of settling my wordly affairs in anticipation of early dissolution, having long since determined to give the property hereinafter described, either by will or deed, to her nephew, the said party of the second part, so that he shall have the absolute and sole possession of the

same at my death; therefore, in consideration of the premises and of her love and affection for said nephew, hath given, granted, and confirmed, and by these presents doth give, grant, and confirm, unto the said party of the second part, all that lot of land in the city of Savannah, county of Chatham, and State of Georgia aforesaid, situate on the southwest corner of Bull and Jones streets, and known in the plan of said city as lot number five (5), Monterey ward, the same being what is commonly called a city lot, and subject to an annual ground rent of fifty-seven dollars and sixty cents, payable to the Mayor and Aldermen of the city of Savannah, together with all and singular the rights, members, and appurtenances to the same belonging, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, of the said party of the first part, at law or in equity, of, in, or to the same and every part thereof, to have and to hold the same, and every part thereof unto him, the said party of the second part, for and upon the uses, limits, intents, and purposes hereinafter set forth, and no other whatsoever; that is to say, in trust, to have and to hold the same, to and for the sole, separate, and exclusive use of her, the said party of the first part, for and during her life; and he, the said party of the second part, exercising no control over the same, and obeying in all things the directions of the said party of the first part as to the use, management, disposition, and possession of the same during her life as aforesaid, and from and immediately after the death of the said party of the first part, then to have and to hold the same unto the said party of the second part, his heirs, administrators, executors, and assigns, to his and their sole use and benefit, free from any trust, forever. It being the intention of the said party of the first part, by this conveyance, to vest in the said party of the second part, an estate in remainder in the said property, to take effect only upon the termination of the estate for life, hereby reserved to herself, during which said particular estate the property shall not be subject to the control of the said party of the second part, or his heirs, executors, administrators, and assigns, in any manner whatsoever.

In witness whereof the said party of the first part hath hereunto set her hand and seal, at Savannah aforesaid, the day and year first above written.

PENELOPE W. TEFFT. [SEAL.]

Signed, sealed, and delivered in presence of ——, the words "to" and "for" being first erased in the eleventh and twelfth lines of third page, and the word "unto" interlined as a substitute therefor.

BENJ. F. GRAY,
JOHN D. ROSS,
Notary Public, C. C., Ga.

THIRD.

The Deed from the Mayor and Aldermen of the city of Savannah to Trustees for Mrs. P. W. Tefft and her children, on pages 9, 10, *and* 11, *printed record, is substantially as follows:*

STATE OF GEORGIA, CITY OF SAVANNAH: This indenture, made the nineteenth day of July, in the year of our Lord one thousand eight hundred and forty-eight, and in the seventy-third year of the independence of the United States of America, between the Mayor and Aldermen of the city of Savannah and hamlets thereof, in the State of Georgia, of the one part, and Charles S. Henry, trustee for Mrs. Penelope W. Tefft, wife of Israel K. Tefft, of the city and State aforesaid, of the other part. * * *

Now, therefore, this indenture witnesseth: That the said Mayor and Aldermen, for and in consideration of the said sum of two hundred and forty-one dollars being paid into the city treasury, as by a receipt for the same, endorsed hereon, and signed by the city Treasurer, will appear, and also in consideration of the rent to be paid, and of the several covenants and agreements to be performed, have bargained and sold, and do by these presents bargain and sell, unto the said Charles S. Henry, trustee, all that lot of land situate, lying, and being in that portion of ground lately in the south common, now called Monterey ward, known by the number five (5), and containing sixty feet in length and one hundred feet in depth, with the rights, members, and appurtenances thereof:

To have and to hold the said lot, with all and singular the advantages thereunto belonging, unto the said Charles S. Henry (trustee), his executors, administrators, and assigns, forever, on this express condition, nevertheless, that he, the said Charles S. Henry, trustee, his executors, administrators, do, and shall, yearly and every year, during such times as the said valuation money shall remain unpaid, by four equal and quarter-yearly payments, pay, or cause to be paid, into the city treasury of Savannah aforesaid, the sum of fifty-seven $\frac{60}{100}$ dollars as ground rent, for the use and occupation of the said lot and premises, the first quarterly payment to be made on the nineteenth day of October next ensuing; and in case of failure herein for the space of twenty days after any of the said quarterly payments shall become due, that then the said lot and premises shall revert to the corporation of the said city, who shall immediately thereafter possess the power of re-entry; and having by means of their proper officers exercised such power, and given a notice thereof in writing, posted on the premises, the said lot, with all improvements thereon, shall be considered, at the expiration of ten days thereafter, as absolutely revested in the corporation, and the estate by these presents created dertermined to all intents and purposes, as fully as if the same had not been bargained for or purchased, any sale or incumbrance or other act made or suffered by the said Charles S. Henry, trustee, his executors, administrators, or assigns, or others under him or them, to the contrary thereof in any wise notwithstanding; and the said Charles S. Henry, trustee, for himself, his heirs, executors, and administrators, and every of them, do hereby covenant, grant, and agree to and with the said Mayor and Aldermen, and their successors in office for the time being, that the said annual ground rent shall be well and truly paid into the city treasury, by quarterly payments as aforesaid, according to the true intent and meaning of the said ordinance and of these presents, and that in case of failure therein, it shall and may be lawful for such re-entry to be made, and for all such other proceedings to be used, as in and by the said ordinance and the condition aforesaid are pointed out and directed.

The said Charles S. Henry, trustee in that case, for himself, his heirs, executors, administrators and assigns, and every of them, hereby renouncing and releasing all claim whatsoever, both in law and equity, to the said lot, with the improvements then thereon being; and it is hereby declared to be the true intent and meaning of these presents, and of all parties to the same, that on payment of the said ground-rent, at the times and after the manner hereinbefore directed, the said Charles S. Henry, trustee, his heirs, executors, administrators and assigns, shall and may, from time to time, and at all times hereafter, peaceably and quietly have, hold, use, occupy and possess and enjoy the said lot and premises, and receive and take the rents, issues and profits thereof, and of every part thereof, to him and to his own use absolutely, without the let, suit, trouble, eviction or

denial of the said corporation, or of any person or persons whatsoever, acting and under them, or by virtue of their authority, subject only to such assessments and burthens as shall be in common with other lot-holders in the said city; and, lastly, it is hereby provided and agreed, that it shall at any future time be in the power of the said Charles S. Henry, trustee, his heirs, executors, administrators, or assigns, if he or they shall so incline, to pay in the said valuation money to the city treasury, with what rent may be due up to that time, in full discharge and extinguishment of the said ground rent, and in that case there shall be an acknowledgment of such payment, under the seal of the city, signed by the Mayor and a majority of the Aldermen for the time being, and attested by the city Clerk, endorsed on these presents, which shall then and from thenceforth vest an absolute estate, in fee-simple, of and in the said premises, in the said Charles S. Henry, trustee, his heirs and assigns, to his and their only proper use and behoof forever.

In witness whereof the parties aforesaid their hands have hereunto interchangeably set, and have also put these presents, under seal, in manner directed by the said ordinance, the day and year first above written.

[Seal of Savannah.]

W. K. BURROUGHS, Mayor.
HENRY HARPER.
H. H. SMETS.
SEABORN GOODALL.
THOS. H. HARDEN.
ROBERT A. ALLEN.
HIRAM ROBERTS.
ROE A. LEWIS.

Signed, sealed and delivered in presence of—
A. C. DAVENPORT, C. C.
JOHN C. HUNTER.
JOHN S. MONTMOLLIN.

[Seal of Savannah.]

Received, Savannah, 8th September, 1848, from Charles S. Henry, Esq., trustee Mrs. Penelope W. Tefft, two hundred and forty-one dollars, being twenty per cent. on valuation of lot No. 5, Monterey ward, and one dollar for increase of said lot.

Twenty per cent. on $1,200	$240 00
Increase	1 00
	$241 00

JOHN C. HUNTER, City Treasurer.

Attest: A. C. DAVENPORT, C. C.

Endorsed:

CLERK'S OFFICE SUPERIOR COURT.

GEORGIA—Chatham County.
Recorded in book F.F.F., folios 405-'6-'7. March 2d, 1849.
Fee $2.00. JOHN E. DAVIS, Clerk S. C. C. C.

FOURTH.

The Deed from Elias Fort to Charles S. Henry and Stephen C. Greene, Trustees, etc., on pages 8 *and* 9, *of printed record.*

GEORGIA, CHATHAM COUNTY :

This indenture, made this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and thirty-one, between Elias Fort, of

the city of Savannah, merchant, of the first part, and Charles S. Henry and Stephen C. Greene, of the said city of Savannah, of the second part, trustees for Mrs. Penelope W. Tefft, wife of Israel K. Tefft, and Henry D. Tefft, William P. B. Tefft and Charles Edward Tefft, children of the said Penelope W. and Israel K. Tefft. * * *

Now, therefore, this indenture witnesseth: That the said party of the first part, for and in consideration of the sum of eight hundred dollars to him in hand paid by the said party of the second part, as trustees as aforesaid, * * * all that lot of land situate, lying, and being in the city of Savannah, and known as lot number twenty-three (23) Warren ward, containing sixty feet in length, and ninety feet in depth, together with all and singular the buildings and improvements, * * * assessments, or ground rent as are imposed on said lot by the Mayor and Aldermen of the city of Savannah, by their deed conveying the same to one Edward White, bearing date the thirtieth day of June, in the year of our Lord one thousand eight hundred and six.

To have and to hold the above granted, bargained, and conveyed premises, etc., * * * to the said parties of the second part, their heirs, executors, administrators, and assigns forever, upon the following trusts and confidence; that is to say :

First. Upon trust to have and to hold the said lot and improvements above described and conveyed, subject to the taxes, assessments, and ground rent imposed on the same by the Mayor and Aldermen of the city of Savannah aforesaid, to and for the sole and separate use, benefit, and behoof of the said Penelope W. Tefft, wife of the said Israel K. Tefft, during her lifetime, and Henry D. Tefft, William P. B. Tefft, and Charles Edward Tefft, children of the said Penelope and Israel K. Tefft, and after the death of the said Penelope, as tenants in common in equal parts.

Secondly. Upon trust that if, during the lifetime of the said Penelope W. Tefft, it should be deemed advisable by her to sell and convey the said premises, then upon this further trust, that the said party of the second part, trustees as aforesaid, or the survivor of them, upon her application, and with the consent of the said Penelope W. Tefft, signified by her, being a party to said conveyance, will sell and convey the said lot and improvements for the best price which can be obtained for the same to any person or persons whatsoever, without any application to a court of law or equity for that purpose to authorize the same, and the proceeds thereof, upon the same trusts as aforesaid, to invest in such other property or manner as the said Penelope shall direct and request for the same use, benefit, and behalf.

Thirdly. Upon trust, if the said Penelope W. Tefft shall not, during her lifetime, direct and request the said premises and improvements to be sold and conveyed as aforesaid, and shall die without making and requesting such sale and conveyance, then, upon this further trust, to have and to hold the said lot and improvements for the sole use and benefit of the said children, or the survivor or the survivors of them, share and share alike, until the youngest shall arrive at the age of twenty-one years, at which time the said parties of the second part, upon the request of the said child or children, are hereby authorized to sell and convey the said lot and improvements as aforesaid, subject to the ground rent aforesaid, for the best price which can be obtained for the same, and the proceeds thereof to pay and divide among the said children, or the survivor or survivors of them, share and share alike. And I, the said Elias Fort, for myself, my heirs, executors, and administrators, the above bargained and conveyed premises unto the said Charles S. Henry and Stephen C. Greene, trustees, as aforesaid, their heirs, executors, administrators, and assigns, shall and

will forever warrant and defend against the claim or claims of all persons whatsoever.

In witness whereof, I have hereunto set my hand and seal on the day of the date first above written.

ELIAS FORT, [L. S.]

Signed, sealed and delivered in presence of—
JOHN F. KACKLER,
JAS. S. PELOT, J. P.

FIFTH.

Deed from Charles S. Henry, Surviving Trustee, Etc., Mrs. P. W. Tefft, and her Three Sons, to John Doyle, of the property bought from Elias Fort, as Exhibit "E," pages 13, 14, *and* 15, *printed record.*

STATE OF GEORGIA, CHATHAM COUNTY:

This indenture, made this thirteenth day of July, in the year of our Lord one thousand eight hundred and forty-nine, between Charles S. Henry, Esquire, of the State and county aforesaid, sole surviving trustee for Mrs. Penelope W. Tefft, wife of Israel K. Tefft, and Henry D. Tefft, William P. B. Tefft, and Charles Edward Tefft, children of the said Penelope W. Tefft and Israel K. Tefft, under a certain deed of trust, made, executed and delivered the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and thirty-nine, hereinafter referred to, and also by and between the said Penelope W. Tefft, for herself, and as evidence of her application, consent and approbation to this indenture, and also by and between the said Henry D. Tefft, William P. B. Tefft, and Charles Edward Tefft, as evidence of their consent and approbation of this indenture by the said Charles S. Henry, Esquire, as their attorney in fact, duly authorized for that purpose by their power of attorney, bearing date the twenty-first day of May, in the year of our Lord one thousand eight hundred and forty-nine, of the first part, and John Doyle, of the city of Savannah, county and State aforesaid, of the second part.

Whereas, in and by a certain deed of indenture made and executed on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and thirty-one, between Elias Fort, of the city of Savannah, merchant, of the first part, and Charles S. Henry and Stephen C. Greene, of the same place, trustees of Mrs. Penelope W. Tefft, wife of Israel K. Tefft, and their children, Henry D. Tefft, William P. B. Tefft, and Charles Edward Tefft, all that lot of land situate, lying and being in the city of Savannah, and known and distinguished in the plan of said city as lot number twenty-three (23), Warren ward, containing, etc. * * * * And whereas, the said Penelope W. Tefft, wife of the said Israel K. Tefft, and *cestui que* ,trust named in said deed of trust, under the power and authority vested in her by said deed, has applied to and requested me, the said Charles S. Henry, sole surviving trustee as aforesaid, to sell and convey the said lot number twenty-three (23), Warren ward, and improvements, under the power and authority vested in me as trustee aforesaid by said deed of trust, unto John Doyle of the city of Savannah, State and county aforesaid, for the consideration of two thousand four hundred dollars, which application, request and her consent thereto is evidenced by her signing and sealing this indenture, as also the approbation and consent of all the *cestui que* trusts named in said original deed of trust, evidenced by their signing and sealing this indenture by their attorney, Charles S. Henry, duly authorized for that purpose, under their power of attorney,

to him in writing, and bearing date the first day of May, in the year of our Lord one thousand eight hundred and forty-nine;

Now, therefore, this indenture witnesseth: That I, the said Charles S. Henry, sole surviving trustee as aforesaid, under the power and authority vested in me by the said original deed of trust as aforesaid, and by and with the consent and approbation of the said Penelope W. Tefft, Henry D. Tefft, William P. B. Tefft, and Charles Edward Tefft, all of the *cestui qui* trusts named in the said original deed of trust, evidenced by their signing and sealing this indenture, and for and in consideration of the sum of two thousand four hundred dollars to me, as trustee as aforesaid, well and truly paid at and before the signing and delivery of these presents by the said John Doyle, * * * the lot of land situate, lying, and being in the city of Savannah, etc. * * * That possession of said lot and improvements hereby conveyed is not to be given to him, the said party of the second part, until the first day of November next ensuing the date of the indenture, but it is to be possessed and occupied by the said party of the first part, trustee as aforesaid, or by his *cestui que* trusts above named, free and clear of all claim, charge, or demand for rent by him, the said party of the second part, his heirs, executors, administrators, or assigns, up to that time; and if then possession cannot be given to him, the said party of the second part, by the said party of the first part, from circumstances beyond his control, he, the said party of the first part, trustee as aforesaid, doth hereby agree to pay, or cause to be paid, unto him, the said party of the second part, his executors and administrators, rent for the occupation of said lot and improvements for the number of days that he, the said party of the second part, may be deprived of the possession thereof, after the first day of November next ensuing the date of this indenture, at and after the rate of four hundred dollars per annum. And it is further agreed and understood by the parties to this indenture that the said party of the first part, trustee as aforesaid, or his *cestui qui* trust, Mrs. Penelope W. Tefft, notwithstanding anything herein contained, are to have the right and privilege of digging up and removing from the garden attached and belongiug to said lot and premises such of the smaller plants and roots now growing or being thereon, as the said Penelope W. Tefft may designate or desire, at any time prior to the taking possession of said lot and premises as aforesaid by him, the said party of the second part, as above set forth:

To have and to hold the said lot number twenty-three, Warren ward, city of Savannah, etc. * * *

In witness whereof, I, the said party of the first part, trustee as aforesaid, and the said *cestui qui* trusts above named, have hereunto set our hands and seals the day and year first above written.

CHARLES S. HENRY, Trustee, [L. S.]
PENELOPE W. TEFFT, [L. S.]
HENRY D. TEFFT,
By CHARLES S. HENRY, his Attorney, [L. S.]
WILLIAM P. B. TEFFT,
By CHARLES S. HENRY, his Attorney, [L. S.]
CHARLES E. TEFFT,
By CHARLES S. HENRY, his Attorney, [L. S.]

Signed, sealed, and delivered in presence of—
S. B. WILLIAMS,
A. PORTER, J. J. C. C. C.

SIXTH.

Power of Attorney from the Three Sons of I. K. and P. W. Tefft to Charles S. Henry, authorizing him to Sell the Fort property, on pages 91 *and* 92, *of printed record.*

STATE OF GEORGIA, CHATHAM COUNTY:

Whereas we, Henry D. Tefft, Wm. P. Tefft, and Charles E. Tefft, of the city of Savannah, State and county aforesaid, children of Israel K. and Penelope W. Tefft, are entitled, under a certain deed of trust, to a reversionary interest in remainder, after the death of our mother, Mrs. Penelope W. Tefft, in and to all that lot of land situate and being in said city, and known and distinguished in the plan of said city as lot number twenty-three (23), Warren ward; and, whereas, it is for interest of all concerned therein, that said lot and improvement thereon should be sold by our trustee, Charles S. Henry, Esq., and good and sufficient titles be executed by him to the purchaser therefor; and we, and each of us, having attained the age of twenty-one years, and being desirous that said lot and improvements should be sold by our said trustee, and the proceeds thereof invested by him in other real estate in the city of Savannah:

Now, know all men by these presents, that we, the said Henry D. Tefft, William P. Tefft, and Charles E. Tefft, have jointly and severally made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint Charles S. Henry, Esq., of the State and county aforesaid, our true and lawful attorney, for us, and in our names, to bargain and sell for the best price which can be obtained therefor, all our and each of our right, title, and estate in and to the said lot No. 23, Warren ward, and with all and singular the improvements to the same belonging or appertaining, and upon such sale, and the receipt of the consideration money therefor, to sign, seal, execute, and deliver to the purchaser, for us, and in our names, a good and sufficient deed in the law for the purpose of more fully and effectually conveying and assuring to the purchasers all our present or future estate, right, and title therein, with such covenants of warranty and quiet enjoyment, or against incumbrances as to him shall seem most prudent and proper, hereby giving unto our said attorney full power and authority in the premises, and hereby promise to ratify, confirm, and allow all that our said attorney may do, or cause to be done, in the premises.

In witness whereof we, and each of us, have hereunto set our hands and seals, this twenty-first day of May, in the year of our Lord one thousand eight hundred and forty-nine.

HENRY D. TEFFT, [L. S.]
W. P. TEFFT, [L. S.]
CHAS. E. TEFFT, [L. S.]

Signed, sealed, and delivered in presence of—
A. PORTER,
J. J. C. C. C.

SEVENTH.

The Letter of I. K. Tefft to his son, William P. Tefft, on page 75 *of printed record.*

SAVANNAH, GA., Sept. 6, 1849.

My Dear Son: This morning's mail brought me your favor of the 28th of August.

As regards this business arrangement with Capt. Brooks, I do not altogether like. If you take my advice, you will never enter again into any business relations with any parties, but commence a commission business on your own account; it will need no capital. The life insurance of your brother Henry, by law, goes to you and Charley. The lodge, of course, pays his funeral expenses, as he was an "Odd Fellow." The money he took North to defray his traveling expenses through the summer will pay his indebtedness to A. Low & Co., which I understand is about four hundred dollars.

When I commenced building on the commons, I supposed the proceeds from the old house and the bank stock given me by Mr. Wilkins would pay for the new one, but I find changing my plan of house from a two and basement story to a three-story and basement changes my figures too. Instead of its costing me five thousand, it will come nearer eight thousand. The paving stones I find much more expensive than I had any idea of. Your brother Henry promised to purchase the marble mantels for the house; the memorandum you found in his pocket book, with dimensions, is the one I gave him when he left home; see Charles Congdon when you go to New York, and ask him where would be the best place to purchase them. Now, what I desire of you and Charley is, that the money you have received from your brother Henry you will give me to put into our new house; it will be the best investment you both can make. As I told you all when the old house was sold, that your interest went into the new house, and this will go in with the same understanding. Write me as soon as possible on this subject. If my request is not complied with, I shall dispose of the property before I will mortgage it to any one, which I should be compelled to do for the want of money to finish it.

You ask why your mother has changed her mind, and withdrawn her proportion of the proceeds from the sale of the old house? Simply because I am unwilling, and will not give my consent to the titles being made wholly and entirely in her name, after the style of paper that was drawn up when Mary and Monday were purchased. You can readily see the injustice to myself as well as to your family and your brother Charley.

My kindest regards to all the family. I cannot express to you how grateful I feel to Mr. Sessions for his last kind act when your brother Henry died, when the aching hearts were stricken down with grief for the head and ornament of that home, which so few weeks since had passed away. Kiss Willie for me; tell Sarah I am not surprised that she is proud of her boy.

If Charley has left for Boston, forward this to him, as I have not time to write again this week.

Your mother sends love.

Affectionately, your father,

I. K. TEFFT.

EIGHTH.

Accounts of I. K. Tefft, showing Cost of House Erected on Lot Number Five (5), *Monterey ward, as set forth on pages* 79 *and* 80 *of printed record, and in hand-writing of I. K. Tefft.*

EXHIBIT "D."

EXPENSE OF HOUSE NO. 5, MONTEREY WARD:

Bricks,.....	$2,040 67
Masons' work....	738 50
Carpenters'....	2,662 15

Lime	301 75
Stone work	752 93
Plastering	546 71
Tin roofs	297 36
Laying flags	200 00
Marble mantle and parts	298 91
Iron railing	94 04
Pump	18 00
Lightening rods	34 00
Bells	25 94
Iron work	61 15
Extra labor	50 00
Hogg, for plan	90 00
Bills paid	$8,212 11
Bills unpaid—Flagstones, $456 30; painting	456 30
Paid on lot	241 00
Addition by counsel	$8,909 41

NINTH.

Written Acknowledgment from Mrs. P. W. Tefft, set forth on page 73, *printed record, as Exhibit "A."*

"This is to certify that my daughter, Mrs. Sarah S. Walden, since July, 1862, has paid her proportion of taxes and expenses of all kinds upon this property, at the corner of Jones and Bull streets.

Savannah, 20th July, 1872. PENELOPE W. TEFFT."

ABSTRACT FROM PROOFS, OF MATERIAL FACTS.

I.

Abstract of Testimony Showing who Furnished the Money to pay for Lot No. 5, *the Premises in Dispute.*

1. Mrs. Walden's printed record, m. p. 100: "Said lot was purchased by said I. K. Tefft and his said three sons, who paid equally for the same."

2. Mrs. Montmollin's printed record, m. p. 114: "I was at the old house when Judge Henry called to get the money to pay for the new lot, No. 5, Monterey ward. Mr. I. K. Tefft and his three sons each paid sixty ($60) dollars to Judge Henry."

3. Mrs. Frances Lewis (sister of Judge Henry), printed record, m. p. 122: "I have always heard from *Mr.* and *Mrs.* Tefft, and *Judge Henry*, that Mr. Tefft and his sons paid for lot No. 5, Monterey ward."

4. Wm. E. Doane, printed record, m. p. 232: "I do not remember that Mrs. P. W. Tefft ever referred to the lot, on said corner of Jones and Bull streets, separately, as a distinct piece of property, but she always referred to the house and lot on said corner as the property which was *purchased*, and built, by the joint means of her husband and sons."

5. Joseph Johnson, m. p. 189, says: "That he understood from conversations with the family, that the new house and *lot* was *bought*, and substituted for the old house, and was held under the same tenure."

As regards this business arrangement with Capt. Brooks, I do not altogether like. If you take my advice, you will never enter again into any business relations with any parties, but commence a commission business on your own account; it will need no capital. The life insurance of your brother Henry, by law, goes to you and Charley. The lodge, of course, pays his funeral expenses, as he was an "Odd Fellow." The money he took North to defray his traveling expenses through the summer will pay his indebtedness to A. Low & Co., which I understand is about four hundred dollars.

When I commenced building on the commons, I supposed the proceeds from the old house and the bank stock given me by Mr. Wilkins would pay for the new one, but I find changing my plan of house from a two and basement story to a three-story and basement changes my figures too. Instead of its costing me five thousand, it will come nearer eight thousand. The paving stones I find much more expensive than I had any idea of. Your brother Henry promised to purchase the marble mantels for the house; the memorandum you found in his pocket book, with dimensions, is the one I gave him when he left home; see Charles Congdon when you go to New York, and ask him where would be the best place to purchase them. Now, what I desire of you and Charley is, that the money you have received from your brother Henry you will give me to put into our new house; it will be the best investment you both can make. As I told you all when the old house was sold, that your interest went into the new house, and this will go in with the same understanding. Write me as soon as possible on this subject. If my request is not complied with, I shall dispose of the property before I will mortgage it to any one, which I should be compelled to do for the want of money to finish it.

You ask why your mother has changed her mind, and withdrawn her proportion of the proceeds from the sale of the old house? Simply because I am unwilling, and will not give my consent to the titles being made wholly and entirely in her name, after the style of paper that was drawn up when Mary and Monday were purchased. You can readily see the injustice to myself as well as to your family and your brother Charley.

My kindest regards to all the family. I cannot express to you how grateful I feel to Mr. Sessions for his last kind act when your brother Henry died, when the aching hearts were stricken down with grief for the head and ornament of that home, which so few weeks since had passed away. Kiss Willie for me; tell Sarah I am not surprised that she is proud of her boy.

If Charley has left for Boston, forward this to him, as I have not time to write again this week.

Your mother sends love.

Affectionately, your father,

I. K. TEFFT.

EIGHTH.

Accounts of I. K. Tefft, showing Cost of House Erected on Lot Number Five (5), *Monterey ward, as set forth on pages* 79 *and* 80 *of printed record, and in hand-writing of I. K. Tefft.*

EXHIBIT "D."

EXPENSE OF HOUSE NO. 5, MONTEREY WARD:

Bricks,	$2,040 67
Masons' work	738 50
Carpenters'	2,662 15

Lime	301 75
Stone work	752 93
Plastering	546 71
Tin roofs	297 36
Laying flags	200 00
Marble mantle and parts	298 91
Iron railing	94 04
Pump	18 00
Lightening rods	34 00
Bells	25 94
Iron work	61 15
Extra labor	50 00
Hogg, for plan	90 00
Bills paid	$8,212 11
Bills unpaid—Flagstones, $456 30; painting	456 30
Paid on lot	241 00
Addition by counsel	$8,909 41

NINTH.

Written Acknowledgment from Mrs. P. W. Tefft, set forth on page 73, *printed record, as Exhibit "A."*

"This is to certify that my daughter, Mrs. Sarah S. Walden, since July, 1862, has paid her proportion of taxes and expenses of all kinds upon this property, at the corner of Jones and Bull streets.

Savannah, 20th July, 1872. PENELOPE W. TEFFT."

ABSTRACT FROM PROOFS, OF MATERIAL FACTS.

I.

Abstract of Testimony Showing who Furnished the Money to pay for Lot No. 5, the Premises in Dispute.

1. Mrs. Walden's printed record, m. p. 100: "Said lot was purchased by said I. K. Tefft and his said three sons, who paid equally for the same."

2. Mrs. Montmollin's printed record, m. p. 114: "I was at the old house when Judge Henry called to get the money to pay for the new lot, No. 5, Monterey ward. Mr. I. K. Tefft and his three sons each paid sixty ($60) dollars to Judge Henry."

3. Mrs. Frances Lewis (sister of Judge Henry), printed record, m. p. 122: "I have always heard from *Mr.* and *Mrs.* Tefft, and *Judge Henry*, that Mr. Tefft and his sons paid for lot No. 5, Monterey ward."

4. Wm. E. Doane, printed record, m. p. 232: "I do not remember that Mrs. P. W. Tefft ever referred to the lot, on said corner of Jones and Bull streets, separately, as a distinct piece of property, but she always referred to the house and lot on said corner as the property which was *purchased*, and built, by the joint means of her husband and sons."

5. Joseph Johnson, m. p. 189, says: "That he understood from conversations with the family, that the new house and *lot* was *bought*, and substituted for the old house, and was held under the same tenure."

II.

Abstract Showing that Lot No. 5, Monterey ward, was to be held upon same uses, and trusts, as are first declared in old Fort deed.

1. Mrs. Walden, printed record, m. p. 98 : "The same trusts attached to, and the same trusteeship existed in relation to this house and lot, and the money so reinvested in the same, as attached to and exists in relation, to the aforesaid property hereinbefore mentioned, as sold by Henry, trustee, to said John Doyle."

Also, m. p. 100 : "It was understood.....that the trusts of the old house followed into this new house and lot.....The said lot No. 5 was purchased and *paid* for by I. K. Tefft and his said three sons.....The title to the new lot to be made out, as titles to said old lot had been, Judge Henry continuing and holding the new lot, under the same uses and trusts as the old lot on St. Julian street had been held by him and Mr. Greene, to-wit : for Mrs. P. W. Tefft and her children."

2. Mrs. Montmollin, m. p. 114 : "I was at the old house when Judge Henry called to get the money to pay for the new lot, No. 5, Monterey ward. Mr. I. K. Tefft and his three sons each paid sixty ($60 00) dollars to Judge Henry, and it was *then* agreed upon by *all parties* that lot No. 5, Monterey ward, was *to be held* for the same uses and trusts as the old lot on St. Julian street, viz. : for *Mrs. P. W. Tefft, and her three sons.*"

3. Mrs. Frances S. Lewis (sister of Judge Henry), m. pp. 122-3 : "I have always heard from Mr. and Mrs. Tefft, and Judge Henry, that Mr. Tefft and his sons paid for lot No. 5, Monterey ward, Judge C. S. Henry holding it *in trust, the same* as the *old house and lot,* as already stated."

Again, m. p. 124 : "I knew from Judge Henry, and Mr. and Mrs. Tefft, that the lot mentioned (No. 5) was held in trust for Mrs. Tefft and sons."

4. Mrs. Sarah R. Henry (widow of Judge Henry), printed record, m. p. 167: "The new house (was) to be built and held for the same purpose as expressed in the original trust of the house and lot in Warren ward." (Old Fort deed.)

Also, m. pp. 168-9: "The said parties *fully* understood and agreed that the new house was held, or intended to be held, in trust for Mrs. P. W. Tefft and her children, upon similar uses and trusts as the house had been which was purchased from Elias Fort, and held in trust by Judge C. S. Henry and Stephen G. Greene."

M. p. 172 she reiterates the same thing, by saying that "the parties referred to (Judge Henry, Mr. and Mrs. I. K. Tefft, and the three sons,) fully understood and agreed," etc.

5. Joseph Johnson, m. p. 187: "Witness was informed that the old house had been sold, and that the new house had been substituted for it, and it belonged to the family in the same manner the old house had been held; his information was derived from old Mr. Tefft, and from conversations generally with the family."

Also, m. p. 189, he says: "That he understood from conversations with the family that the new house and lot was bought and substituted for the old house, and was held under the same tenure, only the new house was a more costly and larger one."

6. M. J. Habersham, m. p. 221: "I have heard Mrs. Tefft frequently say that this new house and lot were to be held on the same uses and trusts as to her children as the old house had been held, on St. Julian street."

7. Record evidence as follows, m. p. 265, being part of old Elias Fort deed: "Secondly, upon trust, that if during the lifetime of the said Pen-

elope W. Tefft it should be deemed advisable by her to sell and convey the said premises, then upon this further trust that the said party of the second part, trustees as aforesaid, or the survivor of them, upon her *application*, and with the consent of the said Penelope W. Tefft, signified by her being a party to said conveyance, will sell and convey the said lot and improvements for the best price which can be obtained for the same, to any person or persons whatsoever, without any application to a court of law or equity, for that purpose, to authorize the same; and the *proceeds* thereof, upon the *same* trust *as aforesaid*, to invest in such other property as the said *Penelope* shall *direct* and *request*, for the *same* use, benefit and behoof."

8. Extract from power of attorney of Wm. P., Henry D. and Charles E. Tefft: "We, and each of us, having attained the age of twenty-one years, and being desirous that said lot and improvements (old Fort property) should be sold by our said trustee, *and the proceeds thereof invested by him in other real estate in the city of Savannah;* now," etc. Printed record, m. p. 247.

9. Darius S. Skinner, the defendant, in his answer to the bill, *sworn to by him*, printed record m. p. 60, says: "He has no information as to what disposition was made of the proceeds of said sale"—*i. e.*, of the proceeds of the sale of the property described in the old Fort deed.

10. Now, we have seen, by the terms of the old Fort deed above quoted, the reinvestment of the said proceeds was under her direction and control. The language is, "To invest in such other property as the said Penelope shall *direct* and *request*;" so she must have directed and *requested* such proceeds to be reinvested in the premises in dispute. The trustee, Charles S. Henry, we have seen, was authorized by the sons, by the power of attorney, to reinvest in other real estate in Savannah; and by the provisions of the Fort deed, under which he was trustee, he was empowered to reinvest only in such property as Mrs. Penelope W. Tefft directed and requested, "*for the same use, benefit and behoof*" "as aforesaid"—*i. e.*, for "the sole and separate use, benefit and behoof of Penelope W. Tefft, wife of Israel K. Tefft, during her life time, and Henry D. Tefft, William P. B. Tefft, and Charles Edward Tefft, children of the said Penelope and Israel K. Tefft, and after the death of the said Penelope, as tenants in common, in equal parts." See m. p. printed record, 22.

11. Again, in the conveyance of said old home (Elias Fort property) to John Doyle (m. p. 32 of printed record t. p. 13), it is recited that the said Penelope W. Tefft, "under the power and authority vested in her by said deed, has applied to and requested me (Charles S. Henry), sole surviving trustee as aforesaid, to sell and convey the said lot number twenty-three (23), Warren ward, and improvements, *under* the *power* and *authority* vested in me as trustee as aforesaid by said deed of trust, unto John Doyle, of the city of Savannah, State and county aforesaid, for the consideration of two thousand four hundred dollars, which application, *request*, and her *consent* thereto is evidenced by her signing and sealing this indenture, as also the *approbation* and *consent* of all the *cestui que* trusts, named in said original deed of trust, evidenced by their signing and sealing this indenture, by their attorney, Charles S. Henry, duly authorized for that purpose, under their power of attorney to him, in writing, and bearing date the first day of May, in the year of our Lord one thousand eight hundred and forty-nine."

Remembering that the power and authority referred to, in the deed to John Doyle, as aforesaid, was not only the power to sell, but to *reinvest the* proceeds upon the *direction* and *request* of said Penelope W. Tefft,

upon the *same* uses and trusts declared previously, in the Fort deed ; and, having seen that such proceeds were reinvested in the premises in dispute, it may be fairly inferred that such investment was made by Mrs. Tefft's direction and request, and hence upon the uses and trusts aforesaid.

But we are not left to inference here, but have, besides the testimony of complainant, other evidence, the following :

III.

Showing the fact of such Reinvestment upon her Request and Direction and Consent.

1. "The new lot, No. 5, Monterey ward, was purchased on July 19, A. D. 1848, (m. p. 24 of printed record), but not paid for until September 8th, 1848. (See m. p. 29.) On May 21st, 1849, the sons executed to Charles S. Henry, trustee, a power to sell the old house and reinvest proceeds, (see m. p. 249); and, on July 13, 1849, the old house was sold to John Doyle (m. p. 32), with the reservation, however, of the right in the whole Tefft family—P. W., and the three sons, to continue to occupy the old *house free of rent*, until November 1st, 1849, following, (see m. p. 37), and to remove garden plants and roots. (Ib.) Showing that the old home was sold, in contemplation of removing to the new and better one, in which the proceeds of the old were to be invested." And, for fear that the new house would not be completed in time, provision was made for the family to remain in the old house at the rent of $400 per annum. See printed record, m. p. 37, and page 26 of this brief.

2. C. D. C. Rhind, printed record, m. p. 103 : "I know of the sale of the said lot of land on St. Julian street, in Savannah, about the year 1849. .....I was told by the Tefft family (this includes, of course, Mrs. P. W. Tefft,) that the proceeds of said sale were to be applied to the building of the house on the said corner of Jones and Bull streets..... I was told that said proceeds were used in said house," etc.

M. p. 107 : "I was informed by the Tefft family that the proceeds of the sale of the house on St. Julian street was to be put in the building of the said house on corner Bull and Jones streets..... Mr. and Mrs. Tefft, and William, told me what was to be done with the proceeds of said sale."

3. Miss Georgia Thompson, m. p. 133 : "I have frequently heard *Mrs.* Tefft say, that the old house was sold for the purpose of erecting the new ; that the old house was too small, and the Tefft family wanted a larger house for them all to live in."

4. Mrs. H. M. R. Montmollin and Mrs. Caroline R. Palin, m. p. 112 : "We do know of the sale of said lot on St. Julian street in 1849..... The proceeds of said lot, when sold, were given to Judge C. S. Henry, for the erection of the new house, on southwest corner of Jones and Bull streets, Savannah, Georgia. We learned this from the Tefft family and Judge Henry."

5. Joseph Johnson, m. p. 187, says : "He remembers that about 1849, he was in the house then occupied by old Mr. Tefft and his family, which then consisted, as well as witness remembers, of old Mr. Tefft and his wife, Charles E. Tefft, and Mrs. Sarah F. Tefft (now Mrs. Walden), and was informed by Mr. Israel K. Tefft that the house belonged to his wife and their children. That the house was to be sold, and other property purchased with the proceeds. Witness also knows that the family removed from the old house to a new one—which was being built when he first saw it—and witness visited the family in the new house. Witness was informed

that the old house had been sold, and that the new house had been substituted for it, and it belonged to the family in the same manner the old house had been held. His information was derived from old Mr. Tefft, and from conversations generally with the *Tefft family.*"

6. Wm. E. Doane, m. p. 233: "I heard Mrs. Tefft frequently refer to Judge Charles S. Henry as one who had charge of the property on said corner of Jones and Bull streets, and she spoke of Judge Charles S. Henry with respect and *praise*, as to his management," etc.

There is no serious dispute, at least there ought to be none, in the face of Skinner's answer, denying all information as to the investment of said proceeds, and the evidence for complainant; that the proceeds of the old house were invested by Judge Henry in the new, to the knowledge of Mrs. P. W. Tefft, when, therefore, she speaks with *praise* of his management, etc., her consent to and approbation of such investment are necessarily included.

7. Mrs. Lewis, m. p. 121, says: "The old house was sold for the purpose of erecting the new." And that she knew of the consequences of such reinvestment of such trust funds, is shown by her frequent admissions of the interest of complainant, Mrs. Walden (as heir-at-law of her deceased husband, Wm. P. B. Tefft,) in said property in dispute.

8. See testimony of Mrs. Elizabeth A. Doane, m. p. 241: "Mrs. P. W. Tefft said that Judge Charles S. Henry was the trustee, and such was his connection with said property, on said corner of Jones and Bull streets. Mrs. P. W. Tefft said that Judge Charles S. Henry knew the rights and ownerships to and of said property; that he, the said Judge Henry, knew all about Mrs. Sarah S. Walden's claim to said property. The said Mrs. Tefft stated that if Judge Charles S. Henry had lived, he would not have permitted her to sign any papers relating to said property, because he did not consider that she had any right to do so."

9. Mrs. H. M. R. Montmollin and Mrs. Caroline R. Palin, m.p. 115: "They, Mr. I. K. and Mrs. P. W. (Tefft) acknowledged to us, at different times, the right, title, and interest of complainant in said house and lot, corner Jones and Bull streets.....A short time previous to her death, Mrs. P. W. Tefft told us that she had sent for Sarah, that is Mrs. Walden, to come and be with her as long as she lived, to look after her (Sarah's) interests and rights; that they were trying to make her (Mrs. P. W.) *give away what belonged to Mrs. Walden.*

10. Mrs. Francis S. Lewis, m. p. 123: "On one occasion, when Mrs. Tefft had company and expected more, I heard her say that she would have no room for company, as she could not turn Mrs. Walden out of her room. .....And she, Mrs. Tefft, had no *right* to turn her out."

11. George Nutall, m. p. 147: "I will state that I am a carpenter, and frequently did work for Mrs. Tefft on the house corner Jones and Bull streets. Whenever I did work for her, she would always tell me that 'you know a part of this house belongs to Sarah (Mrs. Walden), and you must see her about paying for it; that Sarah must pay one-half of your bill.' Mrs. Walden always paid me one-half of my bills for work done on the house."

12. Mrs. J. M. Cass, m. p. 153: "I heard Mrs. Tefft say, a few months before her death, that Mrs. Walden had a claim to said house."

13. Mrs. Montmollin and Mrs. Palin, m. p. 119, say: "We heard repeatedly of Mrs. Walden's claim to the house from every member of the Tefft family, including herself."

14. Mrs. Sarah R. Henry, m. p. 174: Mr. and Mrs. I. K. Tefft, and their

daughter-in-law, Mrs. Walden, occupied said house together, in common, until the death of Mr. and Mrs. Tefft. Mrs. Tefft, *acting in concert* with her daughter-in-law, Mrs. Walden, has rented out portions of the house; Mrs. Walden transacted all the business, received and paid out all money, etc.

15. Miss Georgia Thompson, m. p. 137, says: "I have frequently heard Mrs. Walden assert her claim and right to said house; my knowledge of such claim has been derived both from Mrs. Walden and Mrs. Tefft..... She, Mrs. Tefft, told me Mrs. Walden had a right to said property."

16. Exhibit A, m. p. 197: "This is to certify that my daughter, Mrs. Sarah S. Walden, since July, 1862, has paid her *proportion* of taxes and expenses of all kinds upon this property, at the corner of Jones and Bull streets. PENELOPE W. TEFFT."

Savannah, 20th July, 1872.

17. M. J. Habersham, m. p. 222: "Mrs. Tefft told me that Mrs. Walden shared the expenses of the house and living, etc."

18. Wm. E. Doane, m. p. 232: "Mrs. P. W. Tefft frequently remarked in my presence that Mrs. Sarah S. Walden had a claim on said house..... Mrs. P. W. Tefft said that the said Mrs. Walden's claim grew out of the fact that Mr. Tefft, the former husband of said Mrs. Walden, had contributed money toward the construction of said house.....She always referred to the house and lot on said corner as the property which was *purchased* and built with the joint means of her husband and sons."

19. Mrs. Elizabeth A. Doane, m. p. 240: "She (Mrs. Tefft) often to me, and in my presence, acknowledged that Mrs. Sarah S. Walden had a claim to the said house and lot, on said corner of Jones and Bull streets." M. p. 241: She says that Mrs. Tefft did not "deny Mrs. Sarah S. Walden's claim and right to said property," and Mr. Doane says, on m. p. 237: "I have often heard Mrs. Walden, in speaking with Mrs. Tefft, assert her right and claim to the said property."

20. Mrs. H. M. R. Montmollin, m. pp. 115, 116, says: "That a short time before the marriage of Mr. Walden to Mrs. Sarah Tefft, Mr. I. K. Tefft told me, as did *Mrs. P. W. Tefft*, that they had feared that Mr. Walden after marriage would demand his wife's *portion* of said house in question, and that they would have to give it up, but that Mr. Walden had relieved their fears, stating he had married for a wife, not for 'bricks and mortar.'"

IV.

Charles C. Walden.

And that Mr. Walden knew of his wife's claim, is perhaps the reason why, in addition to what he gives her by his will, he expressly mentions: "I bequeath to my beloved wife, Sarah Frances Walden, all the property, of whatever nature it may consist, which she held, owned, or possessed before our intermarriage, and which became mine by said marriage." See m. p. 249, printed record.

V.

Conflicts in the Case.

The following view of the case reconciles any seeming conflict, or incongruity, in the statements of Mr. and Mrs. Tefft as to the tenure of said property, viz: *Mr.* I. K. Tefft, as well as *Mrs.* Tefft, had an estate in

common in said property with the sons; they all lived together as one family; it was their home. The sons had a reversionary estate in remainder in the *whole* property, except as to the interest which their father had acquired by the statute in his son Henry's portion. Naturally enough, the parents, Teffts, expected that during their life no partition would be asked for by the sons, and as by the natural course of events it was reasonable to expect the sons to survive them, the sons, as well as the parents, considered that after their death the *whole* property would be their children's and their descendants', or heirs'. Such expressions as "the property will belong to them in the end, any way," that Mrs. Walden had a "home" there—an "interest," a "claim," "rights," etc.—are readily explained as perfectly consistent with the trusts of the old Fort deed. During the life of Mr. I. K. Tefft, he being the head of the family, and no renting out of the same having occurred in his lifetime, we hear nothing of the division of any rents; but after his death, Mrs. Tefft sometimes rented out rooms, and then Mrs. Walden is consulted by Mrs. Tefft, and receives her portion of the rents.

1. Mrs. H. M. R. Montmollin and Mrs. Caroline Palin say, m. p. 119: "Mrs. Tefft has at various times rented said house to parties. Mrs. Walden was consulted about renting, and received her portion of the rent."

2. Mrs. Henry, m. p. 174: "Mrs. Tefft, acting *in concert* with..... Mrs. Walden has rented out portions of said house."

3. Mrs. Doane, m. p. 243: "Mrs. Tefft looked to Mrs. Walden for the management of affairs pertaining to the house," etc.

And to such an extent, it seems, did Mrs. Walden actively assert her rights in said property, that James B. Mathews, one of *defendant's* witnesses, says, m. p. 381:

4. "I was attending to business for Mrs. I. K. Tefft, and she *frequently* requested me to write to Mr. Skinner, and tell him that Mrs. Walden was troubling her, and keeping her from exercising control over her own property."

VI.

Ownership of Mrs. Walden.

Collation of the evidence, both of complainant's and *defendants'* witnesses showing that Mrs. Walden always asserted her ownership in, and rights to, said property during Mrs. P. W. Tefft's lifetime, and to her knowledge—sometimes in her presence, and to the extent, it seems, of preventing Mrs. Tefft from exercising control even over her own interest, if we are to believe one of *defendants'* witnesses:

1. J. B. Mathews (colored), m. p. 381.

2. Mrs. Montmollin and Mrs. Palin, m. p. 119: "We heard repeatedly of Mrs. Walden's claim to the house, from every member of the Tefft family, including herself."

3. Mrs. Francis S. Lewis, m. p. 127: "Years before Mrs. Tefft's death Mrs. Walden repeatedly put in and spoke of her claim to and interest in said property."

4. Miss Georgia Thompson, m. p. 137: "After Mr. Tefft's death (this means Wm. P. B., first husband of Mrs. Walden, to whose rights Mrs. Walden succeeded), I have frequently heard Mrs. Walden assert her claim, and right to said house; my knowledge of such claim has been derived both from Mrs. Walden and Mrs. Tefft.....I never heard Mrs. Tefft say that she did not understand Mrs. Walden's claim, nor that she could not see any claim; on the contrary, she told me Mrs. Walden had a right," etc.

5. Dr. R. D. Arnold, the family physician, m. p. 145: "I have heard Mrs. Walden repeatedly and repeatedly assert her claim to said house before Mrs. Tefft's death. On the afternoon of the day on which Mrs. Tefft died, I had a special appointment, at the special request of Mrs. Tefft, to go to her house and witness a paper, in which she said she would do justice to Mrs. Walden."

6. George Nutall, p. 58, m. p. 150: "Mrs. Walden always said a portion of the house was hers, before Mrs. Tefft's death.

7. Mrs. J. M. Cass, m. p. 153: "I heard Mrs. Tefft say, a few months before her death, that Mrs. Walden had a claim to said house.

8. Mrs. Sarah R. Henry, m. p. 174: "She (Mrs. Walden) has ever claimed both before and since the death of Mrs. Tefft, the same rights which she now claims."

9. Wm. E. Doane, m. p. 237: "I have often heard Mrs. Walden, in speaking with Mrs. Tefft, assert her right and claim to the said property.

10. Ann Rose Alexander, one of the *defendants'* witnesses, m. p. 366: "Mrs. Walden always said her first husband, Mrs. Tefft's son, had a claim to said house."

11. Admissions in the will of Mrs. Tefft, second clause, printed record, m. p. and on this brief, p. 14: "The above bequest to Mrs. Walden I make upon the express condition, etc."

VII.

It is proper to show Mr. Israel K. Tefft's Admissions of Mrs. Walden's Claim and Interest.

1. Mrs. Montmollin, m. p. 116: "Mr. I. K. Tefft told me.....that they feared that Mr. Walden, after marriage, would demand his wife's portion of said house in question."

2. Mrs. Sarah R. Henry, m. p. 175: "I do know that Mr. Tefft said she (Mrs. Tefft) had no right to give away, to any one, that which did not belong to her, and *admitting* that Mrs. Walden had a right and just claim to the house which they both occupied."

3. Joseph Johnson, m. p. 190: "Old Mr. Tefft always spoke of Sallie (Mrs. Walden) not only having a home, but also *an interest* in the house in which they were living, and they were then living in the new house."

4. Admissions of Charles E. Tefft (special as contradistinguished from those in which he is included under "Tefft family"):

Joseph Johnson, m. p. 191: "Old Mr. Tefft was a friend of witness' father, and he, witness, and *Charles*, were very friendly and intimate."

M. p. 193: "The testimony he has given has been derived from conversations mostly with Mr. Tefft and his son *Charles*."

M. p. 188: "Charles E. Tefft has, in conversation with the witness, spoken of the new house as a home for the family, and expressed to witness a share and share alike interest with Mrs. Walden in the property."

Having shown that the proceeds of the sale of the old house went into the new, for reinvestment, upon the same uses and trusts first declared, it is proposed to show now, by extracts from the testimony, that the insurance money also went in upon the same understanding, as also other money of William P. Tefft, and his wife. William P. Tefft, former husband of Mrs. Walden, was the only one of the sons who was married, and about the time of the building of the new house had a wife (complainant) and two children.

VIII.

As to the Insurance Money, and Other Money, Contributed by William P. Tefft:

1. Mrs. Walden: See her testimony, p. 40, m. p. 99 printed record.

2. C. D. C. Rhind, m. p. 104: "I heard conversations in reference to said house, among the family, at their residence, on St. Julian street, during the time said house was being built. I heard Mr. Wm. P. Tefft speak of said house, and its uses, etc., about the same time, in his office..... Understood, from the same source, that said house was built from the proceeds of the sale, and from insurance money on the life of Henry Tefft, and about twelve hundred dollars belonging to Wm. P. Tefft."

M. p. 105: "I was told Wm. P. Tefft furnished about $1,200 of his money to help build said house, besides his interest in said insurance money."

M. p. 108: "I was generally informed by the family, and by Mr. and Mrs. Wm. P. Tefft especially, while said house was being built, that Wm. P. Tefft furnished about twelve hundred dollars, *besides his interest in said insurance money*, to help build said house.

3. Mrs. Montmollin and Mrs. Palin, m. p. 113: "Besides the proceeds of the sale of the old house, as mentioned, there went into the new house the life insurance money of Henry Tefft, which belonged to William and Charles Tefft, and which amounted to $5,000; besides Mr. I. K. Tefft told us that several hundred dollars belonging to Wm. P. Tefft's wife, Sarah (now complainant), also went into said house."

M. p. 114: "Mr. I. K. Tefft told us that as said William and Charles had put into said house, the money which they received from the life insurance policy of their brother, Henry P., his (Henry's) interest in said house would belong to them, viz: William and Charles."

M. p. 118: "We were not present when Wm. P. Tefft advanced or paid money to build said house. Mr. and Mrs. I. K. Tefft told us of the same repeatedly while the house was being built, and afterwards, we have already stated our information, from Mr. and Mrs. I. K. Tefft, as to the life policy on life of Henry D."

4. Mrs. Frances S. Lewis, m. p. 122: "I have always heard from Judge Henry and Mr. I. K. Tefft, that Wm. P. and Charles Tefft not only gave their portion from the old house, for the erection of the new, but also their money from the life insurance of their brother Henry. I have always understood that the policies on the life of Henry Tefft amounted to five thousand dollars.

M. p. 125: "I was not present when Wm. P. Tefft advanced money to build said new house, and don't know how much it was. Judge Henry told me about it while the *house was being built;* also that Wm. P. Tefft's portion of his brother Henry's life insurance money was put into said house. This information was also derived from Mr. Tefft."

5. William Rogers, m. pp. 128–9: "Several years after the erection and completion of the house on the corner of Jones and Bull streets, in which the Tefft family was then living, Mr. I. K. Tefft went with me to a house I was then building in the city, and while conversing about houses he said to me that he had built his house too large; and further said, that had it not been for the help which he had received from his *sons*, he would not have been able to pay for it; and, if my recollection serves me right, he spoke more particularly of the help he got from William P. Tefft. This conversation referred to the house on the southwest corner of Jones and Bull streets, in Savannah, Georgia."

6. Dr. R. D. Arnold, p. 55, m. p. 141: "I was very intimate with Mr. Tefft

and his family, and his circumstances, and know that he was unable to build said new house without the help of the proceeds of the old lot, or other resources outside of his income. The reason for building the new house was that the Teffts wanted to get into a larger one."..... I "have always heard and understood from the Teffts, and have believed that the life insurance money of Henry Tefft was used for the building of said new house. I have always understood from the same source that said life insurance money was five thousand dollars.

M. p. 142: "From my intimate knowledge of Mr. Tefft and his circumstances for years and years, my firm conviction and belief are that Mr. Tefft never could have built said new house without the aid of the proceeds from the sale of the old lot and the said life insurance money;" "he did not have the means."

M. p. 143, fifth answer: "I have stated, and state again, that I always understood from conversations with the Teffts that said new house was built with the proceeds of said lot on St. Julian street and the life insurance money of Henry D. Tefft."

7. Mrs. Sarah R. Henry, m. p. 168: "In addition to the proceeds from the sale of the old house, Wm. P. Tefft and Charles E. Tefft furnished, as I understood, the sum of five thousand dollars, which was obtained from the life insurance policy of Henry D. Tefft, which also went into said house."

She reiterates the same on m. p. 172.

8. Joseph Johnson, m. p. 189: "That as to the life insurance policy referred to..... witness can only say that he understood, from the conversations of old Mr. Tefft and his son Charles, that there was a life insurance policy existing on the life of Henry D. Tefft, and they were expecting to realize it, and proposed using the funds to be collected from it to the completion of the house, and that without it they could not complete the house, and that it would have been stopped in the building; that it was a necessity to use this money, for without the aid of the money to be received from the life insurance it would have been impossible to have completed the building of the house. Witness does not know the amount of the life insurance, nor where nor in what company it was effected, nor whether it was collected or not. He knows that the new house was completed and finished, and that the family moved into and lived in it, and that is all he knows about it."

9. Letter of I. K. Tefft, m. pp. 202, 203, 204, and p. 22 of this brief.

10. M. J. Habersham, m. p. 221: "I have heard Mrs. I. K. Tefft say that her son William gave some money to Mr. I. K. Tefft, to go into the new building, which money belonged to Mrs. Walden, who was then the wife of William, but I don't know the amount."

M. p. 222: "He answers that the life insurance money of Mr. Henry Tefft, whose life was insured, as I have always understood, for the benefit of his two brothers, was also put into the new house, on corner of Jones and Bull, as I have frequently heard Mrs. Tefft say."

11. Wm. E. Doane, m. p. 231: "Mrs. P. W. Tefft said that the said house, on said corner of Jones and Bull streets, was built with money which was the proceeds of the sale of a house of her husband, and with *money contributed by his sons.* Mrs. P. W. Tefft said to me that she had invested none of her own money in said property. Mrs. P. W. Tefft frequently remarked, in my presence, that Mrs. Sarah S. Walden had a claim on said house, but as to the certain or specific amount of said claim, I don't remember her ever to have been definite. Mrs. P. W. Tefft said that the said Mrs. Walden's claim grew out of the fact that Mr. Tefft, the for-

mer husband of the said Mrs. Walden, had contributed money toward the construction of said house. I do not remember that Mrs. P. W. Tefft ever referred to the lot on said corner of Jones and Bull streets, separately, as a distinct piece of property, but she always referred to the *house and lot* on said corner as the property which was purchased and built by the joint means of her husband and sons."

12. Mrs. Elizabeth A. Doane, m. p. 240: "She (Mrs. P. W. Tefft) both spoke to me, and in my presence, of and about the house she lived in, on the southwest corner of Jones and Bull streets, in the city of Savannah. Mrs. P. W. Tefft said that the said house was built by her husband, assisted by her sons.....Mrs. Tefft said that her husband told her sons to put money in the said property on said corner of Jones and Bull streets, as it would be an investment which would prove a good return, *as property would increase in value;* and that said property, on the corner of Jones and Bull streets, would belong to them (the sons) in the end, any way. She often, to me, and in my presence, acknowledged that Mrs. Sarah S. Walden had a claim to the said house and lot, on said corner of Jones and Bull streets."

IX.

Abstract Showing Testamentary Intention of Mrs. Tefft.

1. Let it not be forgotten that the defendant, Skinner, says in his testimony, printed record, m. p. 271: "I had gone out to Savannah, from this city, at her request, to have such papers and titles made as would secure to me possession, and *ownership at her death,* of her house," etc.

Also, m. p. 280: She "declared her greatest wish and determination was to *leave* that estate, or the *proceeds* of the same, to me, unencumbered *at her death.*"

He says, also, on m. p. 282: "That she sent for him to assist her in arranging her estate," etc.

And Wm. S. Basinger, Esq., defendant's special counsel, says in his testimony, m. p. 343: "That all she wanted was the *use* and *control of* the property during the remainder of her life.....with a perfect assurance that her nephew would have it *when she died.*" "I explained to her how a *will* would not accomplish her purpose, and that she could only do it by means of a deed, after *settling* the general *tenor* of the deed she took up," etc. So that it appears beyond, it would seem, the pale of successful controversy, if we are to admit parol evidence of her intention, which we deny is admissible, that Mrs. Tefft intended to reserve to herself the absolute control and *ownership* of the property during her life, and not a mere life estate, with a simple power of disposal attached.

But the words of the alleged deed are too plain and unequivocal to admit of explanation by parol evidence.

She says, printed record t. p. 15, m. p. 39: That it had long been her intention to give the property to Skinner "either by will or deed, so that he shall have the absolute and sole possession at (my) *her death.*" "*Therefore,*" mark the language! *Therefore,* in *consideration,* etc., etc., she gives him such an estate only; such an estate as he would have taken had she called the paper a "will" instead of a "deed." She, it seems, was indifferent as to the mode of conveyance, but it is significant that, in her mind, a change in her *will* was all that was necessary to accomplish her purpose until Mr. Basinger enlightened her intellect by informing her that a "deed" was what she wanted. The counsel, no doubt, thought so, and may not yet see the contrary; nevertheless, the law of Georgia says that

such an intention cannot be legally expressed by deed, but is of a testamentary character, and can be accomplished only *by will*, (just as Mrs. Tefft thought.) See Code §2395, quoted on p. 45 of this brief.

Mrs. Tefft never intended to do so, and did *not* "convey a *present* estate," but one "accruing and having effect" only after her "death," in the language of that section. It must be perfectly obvious, in the light of the law and authorities, that what she desired to make was "an *irrevocable will*," and not a deed of any present estate.

"A will is the legal expression of a man's wishes as to the disposition of his property *after his death*." Code of Ga., Edi. of 1873, §2394.

And of course is revocable, unless made upon adequate valuable consideration, of the payment of which no pretence is made by Skinner in this case.

This is mentioned by way of the evident solution of the whole matter.

Mr. Basinger, Skinner's counsel, says, in his testimony, m. pp. 341, 342, and t. p. 122: "Mr. Skinner, whom I had never before seen, came to my office with a message from Mrs. Tefft, that she wished to make some changes in her *will*." He went to see her, and "she then went on to explain what she wanted to do with her property, recapitulating the contents of the old will, and stating how she wished to change it."....."She had changed her mind about having the house and lot sold, and now wished to give them to Mr. Skinner, in kind; and furthermore, wished to *do it* (*i. e.*, change her *will*) in such a way that his interest in it should commence at once, and be *irrevocable*, and be wholly independent of any *will* she might afterwards make." This was all she feared, according to Mr. Basinger, that in some weak moment she would *will* the property to Mrs. Walden. This, we contend, is the fair inference to draw form Mr. Basinger's testimony.

He says, on m. p. 351: "Mr. Skinner was a stranger to me; I had never seen him before, and knew nothing about him, except that he was Mrs. Tefft's nephew. He explained to me, in a general way, what his aunt's wishes were; he told me she had sent for him to come to see her about this business, because Mrs. Walden was trying to get her to give the property to her, and she wished to put an effectual stop to all such attempts; which statement was afterwards *confirmed* by Mrs. Tefft." "I gathered from the conversation, for he did not say so in direct terms, that he and Mrs. Walden were not on good terms; and a suspicion arose in my mind that they were both scheming—he to persuade Mrs. Tefft to do more for him than she really wished, and Mrs. Walden to get herself preferred to him."

Mr. Basinger says, in another place, as has been shown, that Mrs. Tefft wanted to change her *will*, that was all. And, of course, the explanation in a general way, by Skinner, of his aunt's wishes, which Mr. Basinger mentions, must have been about the contemplated change of her will. So that the gift which Mrs. Tefft said Mrs. Walden wanted her to make, must have been *by will only*; besides this, all through the line of defense, the effort is distinctly seen to make it appear that Mrs. Walden was always endeavoring to induce old Mrs. Tefft to *will* the property to her; the object, of course, being to suggest the idea, that if she had title as claimed, she would not have solicited a gift from Mrs. Tefft by will. An idea which is refuted by the fact that Mrs. Tefft owned, by inheritance from her husband, one-half of the property, in addition to her life interest; and hence something to will in addition to what Mrs. Walden claimed. But, while denying *in toto* that Mrs. Walden ever acted in any manner inconsistent with her claim, we avail ourselves of such parts of defendant's testimony,

and that of his witnesses, which advances that idea, in order to demonstrate that Mrs. Tefft, according to Mr. Basinger, was afraid that in some "weak moment" she would yield and *will* the property (her interest in it) to Mrs. Walden, hence her desire to make such a disposition of her property to Mr. Skinner *after her death* (*i. e.*—a *will*; see Code §2394), as would *then* secure the same to him, while leaving her, during her lifetime, the same absolute control and ownership as before. By the subterfuge of a trust, which the statute of uses executed at once, by a gift to Mr. Skinner as trustee during her life, who was to *obey* her *directions* "in all things," and, during her lifetime, was to exercise no "*control*" over the property, etc., etc., it was thought that everything was done for Mr. Skinner, and for Mrs. Tefft, which placed them in the same position as if an irrevocable *will* had been made—which paper left Mrs. Tefft in possession of the same estate she had before, passing nothing out of her during her life. We say such a paper is void, under the law of Georgia, inasmuch as being testamentary three attesting witnesses were necessary, and the paper had only *two*. See Code of Ga. §2414, quoted on page 44 of this brief.

THE FINAL DECREE WAS AS FOLLOWS:

"This cause came on to be heard at this term upon the bill, answers exhibits, and proofs, and was argued by counsel; thereupon, upon consideration thereof, it is declared that nothing appears to impeach the title conveyed by the deed from the Mayor and Aldermen of the city of Savannah to Charles S. Henry, as trustee for Penelope W. Tefft, dated July 19th, 1848, according to its terms, or to encumber the same with any trust, express or implied, in favor of the complainant, or any one else through whom she claims; and thereupon it is ordered, adjudged, and decreed that the injunction heretofore granted in said cause be dissolved, and that the complainant's bill do stand dismissed; and it further ordered, adjudged, and decreed that the said complainant do pay all the costs of this suit.

January 20th, 1877. "W. B. Woods, Judge."

ASSIGNMENT OF ERROR ON THE DECREE.

Appellant assigns ten separate grounds of error upon this decree.

FIRST.

Because the court dismissed the bill, without finding upon any of the issues involved except the single one mentioned in the decree, to-wit: "That nothing appeared to impeach the title conveyed by the deed from the Mayor and Aldermen of Savannah to Charles S. Henry, as trustee for Mrs. Penelope W. Tefft, dated July 19th, 1848, according to its terms, or encumber the same with any trust, etc."

(*a*) The decree should have passed upon all the issues:

2d Daniell's Ch. prac. 1006. (Perkin's edition.)

Story's Eq. Juris: §§ 28, 437, 439. (1 Vol., 12th Ed.) Mays & Shivers *vs.* Taylor, 7 Ga. 238.

(*b*) Under the evidence in the record, and in this brief, heretofore specifically set forth (see pages 23 to 34) the deed to the lot in dispute; on pages 9, 10 and 11 of printed record, and pages 15, 16, and 17, of this brief, should have been reformed so as to have conformed to the terms and conditions of the Fort deed, set forth on pages 8 and 9 printed record.

In Georgia the law as stated in the Code, edition of 1873, and in the decisions, is as follows: "§3112. An accident relievable in equity is such an occurrence, not the result of negligence or misconduct of the party seek-

ing relief in relation to a contract, as was not anticipated by the parties when the same was entered into, and which gives an undue advantage to one of them over another in a court of law."

It is precisely this advantage given to appellee, Skinner, by the present frame of said deed from the city of Savannah, that appellant is seeking to avoid by a change in the frame of that deed.

(*c*) "§3114. If the form of conveyance is, by accident or mistake, contrary to the intention of the parties in their contract, equity will interfere to make it conform thereto."

What could have been farther from the intention of I. K. Tefft and his three sons, who furnished the money to buy the lot and build the houses, than that Mrs. P. W. Tefft should have an absolute fee simple title to the property; so soon as she became a widow, as is contended for by Skinner in his answer, page 24, m. p. 58 printed record.

This doctrine receives a full consideration in case of *Wyche and wife vs. Greene*, 16 *Ga.*, 49. In which decision the case of *Hunt vs. the administrator of Rousmanier* is referred to and adopted. 8 Wheaton, 174.

(*d*) In view of the proofs it seems altogether apparent that it was not the *intention* to give Mrs. Tefft any greater rights under the deed from the city, of 1848, than she possessed under the deed from Fort of 1831.

And, it is submitted that the proofs adduced for the appellant, as to the accident or mistake in the deed to the lot in dispute, come strictly up to the stringent requirements of the law in such cases.

(*e*) The accident or mistake can be shown to the court by parol evidence. Code, §3118.

"Parol evidence is admissable to prove a mistake in a deed, or any other contract required by law to be in writing." Code, §3119.

"Equity will grant relief as between the original parties or their privies in law, in fact, or in estate, except *bona fide* purchasers for value without notice."

The appellee, Skinner, was not a purchaser for value, even if the alleged deed of Mrs. P. W. Tefft, of 28th September, 1872, to him, set forth on pages 15 and 16, printed record, and pages 14 and 15, of this brief, should not be held as testamentary in its character.

Appellant contends, and proves, that the whole Tefft family, including Mrs. P. W. Tefft, honestly believed that the deed from the city to the lot in dispute conferred the same rights upon Mrs. Tefft as were contained in the old deed to the Fort property on St. Julian street, and no other.

(See abstract of testimony on pages 23 to 34 of this brief.)

(*f*) Code, §3128. "Accident or mistake, in the execution of a power, or causing the defective execution of the power, will be remedied in equity."

Appellant contends and proves that, by accident or mistake, the trustee, Charles S. Henry, failed to have the deed from the city express the same trusts as were contained in the deed to the Fort property. The power of attorney given by the three sons of I. K. and P. W. Tefft, authorized Judge Henry to sell the property for the purpose of investing the proceeds upon the same uses and trusts as were set forth in the Fort deed; and the proof that their shares were put in the house erected on the lot in dispute, is conclusive that the trustee and the Tefft family intended the deed from the city to express the same uses and trusts, so far as the three sons were concerned, as did the Fort deed.

SECOND.

Because the court did not first reform the deed to the lot in

dispute, and then proceed further and find and decree that said deed, so reformed, contained an executory trust, not determined during the life of Mrs. P. W. Tefft, and the final execution of which, at her death, devolved upon the co-defendants, Charles S. Hardee and John N. Lewis, executors of Charles S. Henry, trustee.

(*a*) This would have involved the construction of the deed from Fort, of 28th June, 1831, set forth on pages 8 and 9 of the printed record, and on pages 17, 18, and 19 of this brief. The first clause of this deed vested the property in trustees for Mrs. Tefft, during her life, and in her three sons, and then after her death in the three sons, in equal parts as tenants in common. This made the mother and three sons the four *cestui que trusts* of the property, in equal parts, during the life of the mother' with a vested remainder interest in the sons, as tenants in common—to vest in possession upon the death of the life tenant. The second clause of this deed, investing Mrs. Tefft with power to have the lot sold, for re-investment, did not change the relation of the parties. This second clause, appellant contends, was executed when the lot was sold to Doyle, after the three sons had become of age, and all the proceeds reinvested in the building of the premises in dispute, upon the uses *aforesaid*. This re-investment, however, was objected to by Mrs. Tefft, as to her $600.00, until her husband agreed to reimburse her in future for that amount, when she consented to and requested the re-investment. And the evidence shows that I. K. Teff, did so pay over to her $600 sometime after. (See printed record m. p. 97.)

(*b*) The deed, to have the 3d clause retained or operative, would be "utterly inconsistent," and in this event the former clause must prevail. Code, § 2697. "If two clauses in a deed are utterly inconsistent, the former must prevail, but the intention of the parties, from the whole instrument, should, if possible, be ascertained and carried into effect." See also Dudley *vs.* Porter, 16 Ga., 616. Daniel *vs* Veal, 32 Ga., 594.

Under Code, § 2265, quoted on page 47 of this brief, the 1st clause of the deed created vested remainders, and upon the death of a remainderman his heirs became entitled, as follows: Code, § 2266. "If the remainderman dies before the time arrives for possessing his estate in remainder, his heirs are entitled to a vested remainder interest, and to a contingent remainder interest when the contingency is not as to the person, but as to the event. If the contingency be as to the person, and that person be not *in esse* at the time when the contingency happens, his heirs are not entitled." Also Code, § 2269. "The law favors the vesting of remainders in all cases of doubt. In construing wills, words of survivorship shall refer to the death of the testator in order to vest remainders, unless a manifest intention to the contrary appears." And this was the law long before the Code; 4 Kents' Commentaries, p. p. 204, 205. 2 Blackstone (Cooley's Ed.) p. 170.

(*c*) And, in construing this deed the law will refer the survivorship, mentioned in the 3d clause, to the coming of age of the youngest child, and not to the death of the life tenant. Even if it be permitted to doubt whether the survivorship is to be referred to the earlier or later period, the law prescribes how this doubt shall be resolved. True, it was contemplated by the granter that the life tenant might die before the remaindermen all came of age; but that was an uncertainty, whereas it was certain when the youngest of the three sons would arrive at full age, if they all lived. All not living to that time, the survivors or survivor should take. All living to that time, their remainder interest became vested. See the case of Moore *vs.* Lyons, 25 Wendell, 119. On m. p. 126 of that report it is held: "It is a well settled rule of law, recognized in

our State, that 'Courts will never construe a limitation into an *executory devise*, when it can take effect as a *remainder;* nor a remainder to be *contingent*, when it can be taken to be *vested.*'"

And, see Carver *vs.* Jackson, 4 Peters, 1. On p. 91 (Curtis' edition, p. 12), of this report, it is held: "The general rule of law, founded on public policy, is that limitations of this nature" (to the parent for life with remainder to children) "shall be construed to be vested when and as soon as they may." Also see, McGinnis *vs.* Foster, 4 Ga., 382. Barlow *vs.* Salter, 17 Vesey, 482; Gourley *vs.* Woodbury, 42. Vt. 395.

(*d*) It was anticipated that the said property should be sold in either of two events:

1. Provided Mrs. Tefft should request it, etc., as set forth in the first clause of the deed.

2. Provided Mrs. Tefft should die without a sale being requested by her, then upon the children, or the survivor of them, coming of full age, the lot could be sold by the trustees, and the proceeds divided as set forth in the third clause.

The sale having been made in pursuance of the second clause, and the proceeds re-invested, was not the re-investment solely as expressed in that clause, upon the same trusts as *aforesaid*, and did not the third clause become forever inoperative? If so, then the re-investment was for the use of Mrs. Tefft and her three sons, during her life, and then to the sons "as tenants in common in equal parts," after her death. That is, the trustees should hold the legal title for the use of four co-equal *cestui que* trusts, during the life of Mrs. Tefft, and then for the three sons, until an adjustment and delivery to the co-tenants.

(*e*) Yet, even if the sale and re-investment did not render inoperative the third clause, and if the third clause shall, along with the others, be grafted on the deed to the lot in dispute, the law of Georgia construes this joint tenancy, with survivorship, to mean a tenancy in common, without survivorship. In the Code, §2300, the law is:

"Joint tenancy does not exist in this State, and all such estates under the English law, will be held to be tenancies in common under this Code."

This section embodies the law as enacted in 1828. See Cobb's Digest, p. 545.

The 2301st section of the Code defines tenancy in common:

"Wherever two or more persons, from any cause, are entitled to the possession simultaneously, of any property in this State, a tenancy in common is created. Tenants in common may have unequal shares * * * *"

In the case of Lowe *vs.* Brooks, 23 Ga., 325, it is held that:

"The common law doctrine of survivorship among joint tenants was abolished by the fifty-first section of the Constitution of 1777."

It is also held that the same result was intended and effected by the said act of 1828.

Compare, Loyless *vs.* Blackshear, 43 Ga., 327.

2. Blackstone (Cooley's Ed.), 180, nts. 1 and 2; 4 Kent's Com., m. p. 360, *et sequitur.*

Riordon *vs.* Holliday *et al.*, 8 Ga., 79.

Dunn *vs.* Bryan, 38 Ga., 154. Parsons *vs.* Boyd, 20 Ala., 112.

(*f*) In any event, even if the law of Georgia permits a tenancy of any kind with survivorship, yet the survivorship by express terms is limited to the coming of age of the youngest of the three sons.

At that time, the law favoring the vesting of remainders, the sons took a vested remainder in the property, "share and share alike" as tenants in commom.

It was contended for appellee in the court below, that by reason of this clause of survivorship the vesting in the sons was contingent upon the death of the mother, and that as all died before she did, no one claiming through the sons, or either of them, other than the last survivor, had any right as against Mrs. P. W. Tefft, who inherited from her husband, who was the only heir of the son Charles, who was the longest liver of the three sons. This was the gist of the defendant's case as contended below. To render this view the correct one, it becomes necessary to hold:

1. That the law in Georgia permits survivorship among *tenants in common*, for survivorship among joint tenancy is expressly abolished.

2. That the law of Georgia does not favor the vesting of remainders.

3. That in a deed where two clauses are "utterly inconsistent," the law of Georgia permits the last, not the first, clause to operate and control.

(*g*) The construction of every deed should be such as to carry into effect the intention of the grantor. Code, §2697 as above quoted, and Code, §2755, as follows: "The cardinal rule of construction is to ascertain the intention of the parties. If that intention be clear, and it contravenes no rule of law, and sufficient words be used to arrive at the intention, it shall be enforced, irrespective of all technical or arbitrary rules of construction." And this was the law before the Code. It was clearly contemplated by the first clause that the sons would outlive the mother, and it was intended that in so doing they should take equally the whole lot as tenants in common. It was quite as clearly contemplated in the third clause that the mother would die before the sons, possibly before they were of age, and it was intended if this happened that such of them as did reach twenty-one years should take the lot "share and share alike."

The evident intent was that in no event, by force of the deed, should the mother have anything *more* than a life estate. The evident intent was that in no event, by force of the deed, should the sons, after coming of full age, be entitled to anything *less* than a vested remainder as tenants in common.

Considering the 3d clause as controlling and making a contingent remainder, then in no event could the contingency be other than the coming of age of the youngest son in the life time of the mother.

By what possible rule can it be held that the language of this 3d clause created contingent remainders in the three sons, or the survivors or survivor of them, only to be vested upon the death of the tenant for life? If this was the intention of the grantor, why put in the words "until the youngest shall arrive at the age of twenty-one years?" See Daniel *vs.* Duncan, supplement to 33 Ga., 29. Worlidge *vs.* Churchill, 3 Brown's Ch., 466. Woodcock *vs.* Duke of Dorset, *Ibid*, 569.

(*h*) There could, by possibility, have been only three contingencies upon which the remainders would have become vested:

1. Upon the sons, survivors or survivor, coming of age during the life estate. If this was the contingency, as appellant contends, then the remainders vested when the youngest son became of age.

2. Upon the death of the life tenant, during the lives of the sons, or survivors or survivor. If this was the contingency, then the deaths of all the sons, during the life of the life tenant, left no remainder to be vested, and caused the fee to revert to the grantor—something clearly not contemplated in the deed.

3. Upon the death of the life tenant, after all the sons were dead. But this is a manifest absurdity, for it would construe the intention of the grantor to have been, that a remainderman was to be incapable of taking until after his death.

(*i*) The trusts declared in the deed from Fort did not become executed, for two reasons:

1. Because the trustees, under the first clause, were to see that the taxes, ground-rent, etc., were paid the city of Savannah, it being a ground rent lot.

2. Because the third clause provided for a sale and re-investment—which was duly made.

If either or all the sons of Mrs. P. W. Tefft had survived her, their right to the property, under the terms of the deed, would not have attached, free from any trust, until the trustee had complied with the terms of the deed, and delivered the property, after seeing that no taxes, etc., were due.

But they all being dead, the property, at her death, vested in the said executors of Charles S. Henry, to be distributed according to the respective rights of the appellant and the appellee, D. S. Skinner, (which rights are set forth in the third ground of error in this brief, *post:*)

(*j*) Considering the trusts of Fort deed engrafted upon the deed from the city of Savannah to the lot in dispute, it was the duty of the executors of the trustee, Charles S. Henry, to see that the ground-rent, taxes, etc., should be paid during the life of Mrs. Tefft, and also to distribute the estate according to law at her death.

This was an executory trust: Code of Georgia, §2313: "Trusts are either executed or executory. In the former everything has been done by the trustee required to secure the property, or to render certain the interest of the beneficiaries, and all that remains for him to do is to preserve the property and execute the beneficial purposes. In executory trusts something remains to be done by the trustee, either to secure the property, to ascertain the objects of the trust, or to distribute according to a specified mode, or some other act, to do which requires him to retain the legal estate."

The failure to pay these ground-rents permits the city to re-enter upon the lands, and works a forfeiture of title.

Swoll & Oliver. Equity from Chatham county, Ga., decided August Term, 1878. Pamphlet decisions, p. 103.

(*k*) The trust being executory, after the death of Mrs. Tefft, the Court should have perpetually enjoined the action of ejectment; for, until action by the executors of the trustee, Skinner had no such title to the property as would sustain ejectment against Mrs. Walden, whether or no the conveyance to him from Mrs. Tefft was a deed or a paper testamentary.

THIRD.

Because the Court did not, after reforming the deed from Savannah, find and decree the interest of appellant in said lot of land and improvements, No. 5, Monterey ward, to be four-ninths ($\frac{4}{9}$) undivided interest, as follows:

(*a*) That under the deed from the city of said lot the same uses and trusts applied as were set forth in the deed of Fort to trustees executed 24th of June, 1831.

(*b*) That Mrs. P. W. Tefft had originally only a life interest in the lot and improvements in dispute, and each of said three sons an undivided one-third interest subject to said life interest.

(*c*) That upon the death of Henry D. Tefft in August, 1849, intestate, his one-third interest vested, in equal shares, in and to his father, I. K. Tefft, and his two brothers, Wm. P. and Charles E. Tefft, thus making the interest of I. K. one-ninth, the interest of Wm. P. four-ninths, and the interest of Charles E. four-ninths—subject to life interest of Mrs. P. W. Tefft.

(*d*) That upon the death of William P., husband of appellant, on 9th

August, 1852, intestate and without issue, his said interest of four-ninths vested in appellant, subject to life estate above mentioned.

(*e*) That upon the death of Charles E. Tefft on 12th of June, 1853, intestate and a bachelor, his said four-ninths interest vested in his father, Israel K., subject to said life estate; thus leaving said I. K. with five-ninths interest, and appellant with four-ninths interest in said lot in dispute.

(*f*) That upon the death of said I. K. Tefft on 13th June, 1862, his wife, Mrs. P. W. Tefft, became the owner of his estate in said lot, subject to the trusts and limitations in the deed from Fort; and that, upon her death on September 11th, 1873, the said interest of five-ninths became, under her will, vested in her executors, subject to such trusts as were set forth and declared in the Fort deed, which should have been engrafted on the deed from the city to lot in dispute. That is, the interest of Mrs. Tefft in the property in dispute (if her conveyance to Skinner was a nullity, as is hereafter shown) vested in her executors under her will. And, as the *legal title* was all along in the trustee Henry, and his executors after his death until the death of his life tenant, Mrs. Tefft, her life estate terminated; and the five-ninths interest of Mrs. Tefft vested in possession in her legal representatives. See Code of 1873, §2451:

"All property, both real and personal, in this State, being assets to pay debts, no devise or legacy passes the title until the assent of the executor is given to such devise or legacy."

(This section of the Code is again adverted to under the *sixth* ground of alleged error.)

Code, §2484, says: "The following rules shall determine who are the heirs-at-law of a deceased person:

"1. The husband is the sole heir of his intestate wife." * * * *

"2. If the intestate dies without children, or the descendants of children, leaving a wife, the wife is his sole heir.

"3. Brothers and sisters of the intestate stand in the second degree, and inherit, if there is no widow, or child, or representative of child.

"6. The father, if living, inherits equally with brothers and sisters. If there be no father, and the mother is alive, and a widow, she shall inherit in the same manner as the father would. If the mother is not a widow, she shall not be entitled to any portion of such estate, unless it shall be that of the only or last surviving child of the mother, in which event she shall take as if unmarried."

(*g*) If this Court should reverse the decree below, because the trusts of the Fort deed should have been grafted upon the deed from the city, then appellant claims the four-ninths interest above set forth. But if that decree, to that extent, was correct, then appellant claims a still larger interest, as is set forth in the fifth ground of error herein.

FOURTH.

If the Court did not err in failing to engraft the trusts of the Fort deed upon the deed of the city of Savannah to the property in dispute, then the Court erred.

Because the Court did not find and decree that, according to the terms of the said deed from Savannah to C. S. Henry, trustee of Mrs. P. W. Tefft, Israel K. Tefft, her husband, took an estate, free from any trust or charges, in favor of his wife, and held it for his three sons.

(*a*) The law in reference to the separate estate of the wife was first changed by the Code which went into operation in 1863.

§2307: "No words of separate use are necessary to create a trust estate for the wife. The appointment of a trustee, or any words sufficient to create a trust, shall operate to create a separate estate."

(*b*) The only words establishing the estate of Mrs. Tefft, under the deed from the city to the lot in dispute, are: "This indenture, made the 19th July, 1848, * * * * between the Mayor and Aldermen of the city of Savannah, * * * * of the one part, and Charles S. Henry, trustee for Mrs. Penelope W. Tefft, wife of Israel K. Tefft, * * * * of the other part."

By the law of Georgia, as it then was, the Code not having gone into operation, these words vested an absolute estate in the husband. Logan, trustee, *vs.* Goodall, executor, *et al.* 42 Ga. Reports, 95.

On page 115 of that report the court say: "2. Previously to the Code, which alters the law in this particular (Revised Code, §2281,) it was necessary, in order to create a separate estate in the wife, that distinct words to that effect, be used, or that the nature of the conveyance must be such as to exclude the marital rights of the husband. The mere creation of a trust for the use of the wife, by a stranger, was not sufficient: 19 Georgia, 577. 35 Georgia, 190." (By later edition §2281 is changed to §2307.)

The action, in 42 Ga., 95, was ejectment, and the deed in controversy was from the city of Macon, on the ground-rent plan, as is the deed of 19th July, 1848, except that it was for nine hundred and ninety-nine years, instead of "forever," as in the deed of 19th July, 1848, to the lot in dispute.

(*c*) The ruling in the decision in 42 Georgia is borne out by the following authorities:

Perry on Trusts, §§ 647, *et sequitur.*

Bispham's Equity, pp. 100, *et sequitur.*

Schoulers' Domestic Relations, 187, *et sequitur.*

(*d*) I. K. Tefft, taking the lot free from any trusts in favor of his wife, held it, under the proofs and the declaration of trust contained in his letter of September, 1849, in trust for his sons, and according to the amounts they each contributed to buy the lot and build the houses. What these amounts are is considered in the ground of error next following.

(*e*) Under the proofs the reduction of the lot to possession, by I. K. Tefft was complete, the same being given to the wife during coverture. Early *vs.* Sherwood, Dudley's Ga. Report, 7.

Rogers *vs.* Cunningham, 51 Ga., 40. Prescott & Pace *vs.* Jones & Peavy, 29. Ga., 58.

(*f*) The deed of 19th July, 1848, on ground rent plan, conveyed a fee simple. Gibbons *vs.* Gibbons, T. U. P. Charlton's Ga. Reports, p. 113.

FIFTH.

Because the court did not find and decree the said lot and improvements to have cost eight thousand nine hundred and nine dollars and forty-one cents ($8,909.41) and, under the view taken in *fourth* ground of error, that the interest of appellant in said sum, derived through her said husband, Wm. P. Tefft, was four thousand two hundred and seventy-nine dollars ($4,279.00.)

(*a*) The whole amount, as set forth in the handwriting of I. K. Tefft, that the lot and buildings cost was $8,909.41, as shown on pages 79 and 80 of printed record, and on pages 23 ~~and 24~~ of this brief.

The following items account for $8,487.27 of this whole amount of $8,909.41:

1. $2,400 derived from sale of old Fort property.
2. $4,247.27 derived from life insurance of Henry D. Tefft.

3. $850.00 derived by I. K. Tefft from sale of stock given him by Mr. Wilkins. (See letter of Mr. Tefft on page 75, and testimony of Mrs. Walden on page 40 m. page 99 printed record.)
4. $750.00 payment of money of appellant by her husband to I. K. Tefft.
5. $240.00 paid for original cost of lot by I. K. Tefft and his three sons.

This leaves $522.14 of the whole cost not specially accounted for. It is also to be noted that Mr. Tefft puts down the sum of $456.30, the cost of flagstones, as being unpaid. Thus there is a discrepancy of only $65.84, and no doubt this amount was advanced by Mr. Tefft, from time to time, during the building of the house. And the balance of $456.30 assumed and paid by him, for his sons, soon afterwards, or advanced by Wm. P. as I. K. Tefft spoke to Mr. Rogers especially of the help he received from his son William. (See printed record m. p. 129.) If Wm. P. Tefft had withheld his share of the insurance money of his brother Henry, as the answer of Skinner alleges, then the deficit would have been $2,645.77. Dr. Arnold (page 55, m. p. 142, 9th answer printed record) swears that the house could not have been built without the insurance money. And Mr. Tefft, in his letter to his son, threatens to sell the house, before completing it, if this money is not furnished.

(*b*) Of this amount which went to the purchase of the lot, and to build the house, Wm. P. Tefft, husband of appellant, should be credited with the following sums:

DIRECTLY FURNISHED.

1.	$ 750.00	given by his wife, the appellant, to be put in the house.
2.	60.00	advanced by him to purchase the lot.
3.	800.00	the one-third proceeds of the sale of Fort property.
4.	2,123.63	the one-half realized from life insurance of Henry D. Tefft.
	$3,733.63	

INDIRECTLY FURNISHED.

5.	$266.66	the one-third of the $800 belonging to Henry D., from sale of Fort property; the division being between his two brothers and his father.
6.	20.00	the one-third of the $60 advanced by Henry to purchase land lot from city.
7.	20.00	the one-third of the $60 advanced by I. K. Tefft in purchase of the lot for his sons.
8.	6.66	the one-third of what Henry owned in his life of the $60 that his father had furnished to purchase said lot.
9.	174.04	the one-third of $522.14 not accounted for as above, and which was undoubtedly made up by I. K. Tefft for his three sons, or contributed by Wm. P. Tefft.
10.	58.01	the one-third of the $174.44 descending to Wm. P. upon death of Henry D.
	$ 545.37	

$4,279.00 Total.

(*c*) Thus the lot and improvements cost.....$8,909.41
Of which Wm. P. Tefft furnished..... 4,279.00

(*d*) The premises being shown to have appreciated at least to the value of $12,000 at the time of trial (being worth on the market $20,000 in 1865), the interest of appellant is the $\frac{4279}{8909}$ of 12,000, which equals $5,763.49.

And in this view of the trusts upon which the said lot was held, which is, we submit, the correct one, the interest of appellant was about $\frac{1}{8}\frac{2}{0}\frac{7}{0}\frac{8}{9}$ of the whole property, and the interest of Mrs. P. W. Tefft about $\frac{7}{8}\frac{1}{0}\frac{6}{0}\frac{3}{9}$ of the whole.

(*e*) The letter of I. K. Tefft to his son, Wm. P., shows:

1. That by superintending and paying for the buildings then erecting on the lot in question, he considered he had something more at stake than he had had in the old property. And his conduct would seem to imply that when his wife refused to let go into the buildings the $600 which she claimed as hers, unless he would reimburse her for it, he considered that not even her life interest was to attach upon the new premises.

2. By threatening to dispose of the place, if his sons did not furnish the insurance money of their dead brother, Mr. Tefft clearly indicated his belief that he, and not the trustee, was, in law, vested with the title to the new lot, as is shown under the fourth ground of error.

3. This letter, taken in connection with the provisions of the deed by Elias Fort, of 1831 (on p. 18 of this brief), contains an explicit declaration of trust, by I. K. Tefft, in favor of his two living sons, William P. and Charles E.

(*f*) It is admitted that William P., husband of appellant, was the only one of the three sons who was ever married. He had settled down; he was a commission merchant in Savannah, and was, with his young wife, living in the old house with his parents. His wife had just borne him a son, which was the second child. A superficial consideration of the sentiments which oftenest actuate human conduct leads irresistibly to the conclusion that, of the three brothers, he was most likely to have been solicitous for the erection of the new house, and most likely to have put into it all of his means that could be spared, for the benefit of himself and family. The death of Henry D. brought to him a fund which he could easily spare.

SIXTH.

Because the Court did not find and decree that the pretended deed of gift of 28th September, 1872, from Mrs. P. W. Tefft to Darius S. Skinner (set forth on pages 15 and 16 printed record, and on pages 14 and 15 of this brief), was not, in fact, a deed, and conveyed no title to Skinner, but testamentary in its character and effect; and therefore void, even as a will, because not properly witnessed.

I.

(*a*) If this paper conveyed no immediate interest and estate out of Mrs. Tefft, then it was not a deed; but, if properly executed, a will, and could not be relied on for a recovery in the action of ejectment.

But it was not good as a will, because not attested by three witnesses. Code, §2414, declares that: "All wills (except nuncupative wills) disposing of realty or personalty must be in writing, signed by the party making the same, or by some other person, in his presence, and by his express directions, and shall be attested and subscribed in the presence of the testator by three or more competent witnesses."

(*b*) It is not an executory trust deed, for Skinner is expressly prohibited from any custody, management or control whatever over the property while Mrs. Tefft shall live. And the paper also expressly reserves to the

grantor the "full use, management, disposition and possession of the same during her life."

As trustee, Skinner took nothing under Code of Georgia, §2340, which reads:

"Generally a trustee takes an estate as large and extended as the necessities of the trust require, and no more."

(*c*) It was, at most, an executed trust, under §§ 2313 and 2314 of the Code. § 2313 reads:

"Trusts are either executed or executory. In the former everything has been done by the trustee required to secure the property or to render certain the interest of the beneficiaries, and all that remains for him to do is to preserve the property and execute the beneficial purposes. In executory trusts, something remains to be done by the trustee, either to secure the property, to ascertain the objects of the trust, or to distribute according to a specified mode, or some other act to do which requires him to retain the legal estate."

See Edmondson and wife *vs.* Dyson, 2 Ga., 307. On page 320 the court says: "There is a settled distinction between trusts *executed* and *executory*. In the latter *something is left to be done; some conveyance thereafter to be made*."

In Egerton *vs.* Brownlow, 4 H. L. Cas., 210, quoted in Bispham's Prin. of Eq., p. 86, § 57, Lord St. Leonard, in distinguishing executed from executory trusts, says: "Has the testator been what is called, and very properly called, his own conveyancer? Has he left it to the court to make out from general expressions what his intention is; or has he so defined that intention that you have nothing to do but to take that which he has given to you and convert them into legal estates?"

On the same page and in the same section of the work by Bispham, he remarks:

"In an executed trust the instrument must be interpreted according to the rules of law, which are, in general, the same for equitable as for legal estates, although by such interpretation the *intention* may be defeated."

The said section 2314, reads:

"In an executed trust for the benefit of a person capable of taking and managing property in his own right, the legal title is merged immediately into the equitable interest, and the perfect title rests in the beneficiary, according to the terms and limitations of the trust."

These two sections fully conform to the statute of uses, which is a part of the law of Georgia, and has been so construed in Coughlin *vs.* Seago, 53 Ga., 250. It is, also, there said, p. 250: "The existence of a trust, without any necessity for such an exception to the ordinary legal title to property, has always, since the statute of uses, been contrary to the policy of the law."

Bowman *vs.* Long, 26 Ga., 142, was a case where the testator had devised certain property to a minor grandchild, and at his death, intestate, to his heirs; but, providing that the property and its rents and profits remain in possession of a named trustee until the minor should reach twenty-one years of age.

The guardian of the child filed a bill to get possession of the legacy from the executor and trustee; and recovered, upon the ground that the trust was executed.

On page 146 the court held:

"It is true that the last item of the codicil is in the following words: 'I appoint my son, Robert Bowman, trustee for my said grandson, William

Henry Long.' And it is, probably, true, that the testator's intention in this item was that his son Robert should hold the property bequeathed to the grandson, in trust for that grandson."

"But are the words creating the trust sufficient to effectuate such an intention? * * * * If it is an executed trust * * * * * then it is clear that the words are not sufficient to effectuate the intention; for no words can be sufficient to effectuate an intention which is contrary to law."

In Perry on Trusts (1st Ed.), p. 329 and §359, it is stated: "In *executed* trusts the rules of property govern, and not the intention of the settler, if it is contrary to the law or rule of property." Note 3 refers to Choice *vs.* Marshall, 1 Kelly (Ga.), 97.

This doctrine is also fully recognized in the later case of Gray *vs.* Obear, 54 Ga., 231.

In that case, on page 233, the court says:

"That the statute of 27th of Henry the VIII., concerning uses and wills, is of force here as a part of the law of this State, there can be no doubt."

And, under a like statute, in Alabama: Tindal *vs.* Drake, 51 Ala., 577.

II.

(*d*) Yet farther, it is contended by appellant that, under the peculiar provisions of the paper in question, there was not even an executed trust. A trust, once declared, may become executed. But in this case no trust was ever actually created, because none was ever legally declared, and no title, of any kind, ever passed *out of* Mrs. Tefft during her life. She was after her husband's death, a *feme sole*, and, under the laws, no trust was necessary or legal to preserve the property for her full and perfect use. Nor does the deed give to Skinner and his heirs, or to him in fee simple, to hold in trust, etc.

Therefore, "according to the terms and limitation of the trust," attempted to be raised in the paper, no legal estate for life, or of freehold, ever passed out of Mrs. Tefft to Skinner during the life of the grantor; and no trust was created.

In Gray *vs.* Obear, 54 Ga., 235, it is held: "If an estate is conveyed to one person for the use of another, or upon trust for another, and nothing more is said, the statute of uses immediately transfers the legal estate to the use, and *no trust is created*, although express words of trust are used."

Mrs. Tefft did say something more, which is favorable to the appellant, and that was, that Skinner should not take *any* interest in the property until she died.

And in the very recent case of Sutton *vs.* Aiken, pamphlet decisions of February Term, 1879, the Supreme Court of Georgia says:

"A conveyance in trust for a woman, married or single, of full age and sound mind, with no remainder to protect, and nothing for the trustee to do, operates to pass the legal title immediately into the beneficiary, the conveyance being made since the act of 1866, which secures to (married) women all their property as separate estate. The trust is executed. Code, §2314."

This §2314 is the one last above quoted, page 43.

The act of 1866 referred to by the Court, is embodied in the Code, §1754, as follows:

"All the property of the wife, at the time of her marriage, whether real, personal, or choses in action, shall be and remain the separate property of the wife; and all property given to, inherited, or acquired by the wife

during coverture, shall vest in and belong to the wife, and shall not be liable for the payment of any debt, default or contract of the husband."

III.

(*e*) As to the construction of this paper, see Code, §2395 and §2691:

§2395: "No particular form of words is necessary to constitute a will; and in all cases to determine the character of an instrument, whether it is testamentary or not, the test is the intention of the maker, from the whole instrument, read in the light of the surrounding circumstances. If such intention be to convey a present estate, though the possession be postponed until after his death, the instrument is a deed; if the intention be to convey an interest, accruing and having effect only after his death, it is a will." (Advert to this brief pages 33, 34, and 35, IX. abstract.)

§2691: "A future interest, or estate, may be conveyed by deed; but it must operate to transfer the title immediately, or the instrument will be testamentary and revocable."

(*f*) But we are not left to speculate as to the real intention of Mrs. Tefft. She begins the paper by a statement that being "in anticipation of early dissolution, and having long since determined to give the property to her nephew, either by will or deed, so that he shall have the absolute and sole possession of the same at my death;" and ends with a declaration that her intention was, by the paper, "to vest in the party of the second part an estate in remainder in the said property, *to take effect* only" at her death.

(*g*) It is conceded that in Georgia the failure of the particular estate, *when once created*, does not destroy the remainder. Code, §2264: "No particular estate being necessary to sustain a remainder under this Code, the defeat of the particular estate for any cause does not destroy the remainder." See 4 Kents' Com: 208. (12 Ed.)

But if the legal title never passed out of the grantor, Mrs. Tefft, during her life, and never vested in Skinner, as trustee or individually, then no particular estate was ever created; and therefore, no remainder over.

In Georgia the Code, § 2265, defines remainders as follows:

"Remainders are either vested or contingent. A vested remainder is one limited to a certain person at a certain time, or upon the happening of a necessary event. A contingent remainder is one limited to an uncertain person, or upon an event which may or may not happen."

This rule, when remainders are sought to be established by deed, is subject to § 2691 of the Code above quoted, which requires that when a future interest or estate is conveyed by deed, that it must operate to transfer the title immediately, or the instrument will be testamentary.

Also in Booth *vs.* Terrill, 16 Ga., 24, the court held:

"One of the rules regulating remainders is, that they must pass out of the grantor at the time the particular estate is created."

Also 2. Bouvier's Institutes, p. 286, m. p. 1830:

"To make a good remainder there are three requisites, namely: "An estate precedent, made at the same time that the remainder commences; that the particular estate continue when the remainder vests, and that the remainder be out of the donor at the time of livery."

Also *Ibid*, p. 287, m. p. 1832:

"The remainder must commence or pass out of the grantor *at the time* of the creation of the particular estate."

Also Spalding *vs.* Grigg, 4 Ga., page 81:

"The estate could not vest presently, and at the same time take effect *in future*. That is an absurdity. The safest criterion of judgment in such cases, is the *intention* as to *when* the estate shall vest."

Also, Hester, Ex'r., *vs.* Young, 2 Ga. (Kelly), p. 31. In this case the following paper was held not to be a deed, but testamentary:

GEORGIA, } 19th day of June, A. D. 1826.
EFFINGHAM COUNTY, }

"Know all men, that I, William Womack, in consideration of natural love and affection for my son, Frederick Womack, I do give unto him the following property: Three hundred acres of land which I now live on, two negroes, Will and Nancy, two horses, and the rest of my stock of hogs and cattle, together with my household furniture, after my death and the death of my wife, to have and to hold the said property forever."

This is the leading case on this subject in Georgia, and the ruling has been recognized and adopted: In Jackson *et al. vs.* Culpepper, 3 Ga., 569, in which case the writing was held to be a deed, and not a will, "because the legal estate passed to the trustee, upon the execution of the instrument"; and because "the fee simple title to the property *irrevocably* passed out of the donor."

In Spalding *vs.* Grigg, 4 Ga., 75, above quoted.

In Cravy *vs.* Rawlins, 8 Ga., 450.

In Symmes *vs.* Arnold, 10 Ga., 506. In this case the grantor, for love and affection, gave outright to her neice, *her heirs and assigns*, certain real and personal property; and added, "I reserve to myself the use of all the property during my natural life, then to go to the above named persons, and from thenceforth to be their property absolutely, without any manner of condition." The court *held* the instrument to be testamentary.

Eliminate the trusts from Mrs. Tefft's conveyance, as the law does, and there is left just such an instrument as the one in 10 Ga.

Compare the words above quoted with these taken from the paper under consideration:

"And from and immediately after the death of the said party of the first part, then to have and to hold the same unto the party of the second part, his heirs, administrators, executors and assigns, to his and their sole use and benefit, free from any trust, forever."

If there never was a trust, then nothing could vest through the expression of trust.

Also compare:

Johnson, adm'r, *vs.* Yancey, adm'r, 20 Ga., 707.

Hall *vs.* Bragg, 28 Ga., 330.

Brewer *vs.* Baxter *et al.*, 41 Ga., 212.

Daniel *vs.* Veal, 32 Ga., 589.

(*h*) Also, in the very recent case of Arnold *vs.* Arnold, decided at February Term, 1879, of Supreme Court of Georgia, pamphlet decisions, p. 34, the court says:

"A paper, signed, sealed and delivered, and attested by two witnesses, in which the maker declares that by reason of his love and affection for certain of his children (naming them), he has this day transferred to them, in their own right, 152 shares of stock in a certain railroad corporation, and 42 shares in another (describing particularly the certificates by which the shares are held); and that said stock is fully and completely transferred to said children; and that it is his intention that the shares shall be divided among them, seven equal parts to be made, and the oldest son to draw and be entitled to two of the parts, which two parts are hereby set

apart to him, and the remaining five parts to be equally drawn, part and parcel alike, by the other five children; but reserving to himself the right and privilege of drawing the dividend on all of said shares during his natural life, and to use and control the same; but immediately on his death, this transfer is to take effect, and the transfer and delivery so intended to be perfected and completed; and constituting and appointing, for the purpose of carrying out this transfer in good faith, and that the same may be done according to his intentions and desires, his friend (naming him), his attorney in fact to transfer said shares of stock to said children on the books of the companies, to all intents and purposes as fully and legally as if done by himself in person; and declaring his desire and hope that this matter may be completely and fully effected as above set forth, by his said attorney in fact, and to do all other things to put said children in possession of said shares, is testamentary in its character, and was without operation in the lifetime of the maker."

In Habergram *vs.* Vincent, 2d Vesey, Jr., 204, 231, Mr. Justice *Buller* said—and this was the opinion of all the Judges—"The cases have established that a writing in any form, whether a deed, poll, or indenture, if the obvious purpose is not to take place until after the death of the person making it, shall operate as a will."

(*i*) As has been shown above (sixth ground, *d*), the law precluded Skinner from taking any title as trustee; and, even if Mrs. Tefft *intended* him to take title during her life, yet such intention must yield to the rules of law.

In Cook *vs.* Walker *et al.*, 15 Ga., 457, the court says: "No intention, however manifest, can contravene the positive rules of law—technical though they may be."

See Wellborn *vs.* Weaver *et al.*, 17 Ga., 267, 276, where Habergram *vs.* Vincent is quoted and approved.

In Brewer *vs.* Baxter, 41 Ga., already referred to, the court, on page 214, says: "A paper having the formalities of a deed may, notwithstanding, be a will. In determining whether an instrument be a deed or a will, the court will not consider what the maker believed it to be, but what, in point of law, it is."

In Cumming *vs.* Cumming, 3 Ga., 460, the court in third head note, and on p. 484, fix the *test* to determine whether a paper be a deed or a will.

"The proper test to determine the character of an instrument, whether testamentary or not, is, *does the legal estate in the property which is the subject of disposition, pass by it?* If the legal estate passes at the time of execution, it cannot be a will." Obviously, the converse of the statement is also true, viz.: If the legal estate does *not* pass at the time of execution, it *cannot* be a deed of gift.

Again, in the same case, p. 485, in referring to the deeds there under consideration, the court says: "Both of the instruments here took effect *eo-instanti* upon the execution, with postponement of possession on the part of the *donees*."

In the case now before this court, it appears, by the terms of the instrument itself, that Mrs. Tefft intended to give Skinner such interest only, as would *take effect* after her death, for she reserved to herself during her life, not only a life estate in the premises, but all her rights, as before the execution of the instrument, including an unconditional power of disposition. In other words, she sought to accomplish by that paper, what the law of Georgia says distinctly can be done only by *will*, *i. e.*, unlimited ownership, control, use, and power of disposition during her life, with a gift to take effect, at her death, to the person named therein. She was

evidently unwilling to strip herself during her lifetime, of any rights over the property. She reserved all rights incident to her ownership. She conveyed nothing out of herself, during her life, of the estate which she had before the paper was signed. What she wanted to do for Skinner could only have been accomplished by will. She wanted to give him something "after her death;" something which would only "take effect" after her death. It made no difference that she was desirous of so fixing matters as to create an irrevocable vested estate in remainder in Skinner; *provided* (as the paper shows), no estate passed out of her and vested elsewhere, and she retained, after the execution of the paper, the same unlimited rights and powers, possession, use, enjoyment, and disposition of the property, as before, during her life. The residue of the estate, thus reserved to herself, shows the ambulatory character of the paper. She, in effect, reserved the right to defeat what Skinner was to have after her death; and that she knew, or suspected what she was doing, to be testamentary, ambulatory, in its character, is manifested by the words in her will, of same date, referring to that paper, and *confirming* it. If she had really believed what she did to be irrevocable, she never would have had any idea that confirmation was necessary. (See the will on page 14 this brief.)

IV.

(*j*) Beyond these rulings of the Georgia Courts, it is shown by other authority that the conveyance from Mrs. Tefft did not create any trust, and did not divest her of any title.

Perry on Trusts, § 99, says:

"Whether the trust is perfectly created or not is a question of fact in each case; and the court, in determining the fact, will give effect to the situation and relation of the parties, the nature and situation of the property, and the purposes or objects which the settler had in view in making the disposition."

Also § 97:

"If the donor or settler does not propose to make himself a trustee, the trust is not perfectly created. As where there is a mere *intention* of creating a trust. * * * * "

Also § 100:

"If the donor or settler propose to make a stranger the trustee of his property, and the property is a legal estate, capable of legal transfer and delivery, the trust is not perfectly created unless the legal interest is actually transferred or vested in the trustee. It is not enough that the settler executed a paper purporting to pass it, if in fact the paper does not have that effect. The intention of the settler to divest himself of the legal title must be consummated or executed, or the court will not enforce the trust."

Compare Jones *vs.* Lock, L. R. 1, Ch. 26, cited in note 1, § 99:

[Skinner is in law looked upon as a *stranger*, although he is the nephew of Mrs. Tefft; for, "It seems that equity will give effect to a provision for a wife or child, though not for a collateral relation." Bispham's Eq: m. p. 67, note 3, and Bond *vs.* Bunting, 28 P. F. Sm. 210.]

See also as specially applicable:

Bispham's Equity, m. pp. 66 and 67, and authorities there cited in the notes.

In m. p. 67, top p. 103, it is said:

"When a settler is possessed of the legal title to the subject matter of the settlement, he may create a valid trust thereof, either by a de-

claration that he holds the property in trust, or by a transfer of the legal title to the property to a third party upon certain trusts. In other words he may constitute either himself or another person the trustee. If he makes himself the trustee no transfer of the subject matter is necessary. If he makes a third party trustee, he must transfer to him the subject of the trust in such a mode as will be effectual to pass the legal title. But if there is a mere *intention* to convey the property upon trusts, this will not be sufficient if the proper steps are not taken for the purpose of making a valid transfer of the legal title to the intended trustee."

V.

(*k*) The second section of the act of the General Assembly of Georgia, approved 21st December, 1821, Cobb's Digest, p. 169, is in the Code as follows:

"§ 2248. The word '*heirs*,' or its equivalent, is not necessary to create an absolute estate; but every conveyance, properly executed, shall be construed to convey the fee, unless a less estate is mentioned and limited in such conveyance. If a less estate is expressly limited, the courts shall not, by construction, increase such estate into a fee, but, disregarding all technical rules, shall give effect to the intention of the maker of the instrument, as far as the same is lawful, if the same can be gathered from its contents; and if not, in such cases the courts may hear parol evidence to prove the intention."

This act, from which the above section is taken, has received a construction in Cook *vs.* Walker *et al.*, 15 Ga., 457. It is there stated, on page 462:

"[2] We hold it to be an incontrovertible rule, then, that whenever an estate is given in Georgia, either by deed or will, to a person generally or indefinitely, with the unlimited power of disposition annexed, that it invariably vests the absolute fee in the first taker; and that neither a remainder nor an executory devise can be limited over upon such estate. A remainder cannot, because no remainder can be limited on an estate of inheritance."

(*l*) But it may be claimed that the instrument in question comes under the exception set forth in clause 3, on page 462, of that report, where it is said:

"The only exception to the rule, thus broadly stated, is, where the donor or testator gives to the first taken an estate *for life only*, by certain and express words; and annexes to it a power of disposal. In that particular and special case, it has been held, and the better opinion seems to be, that the donee or devisee for life will not take an estate in fee, notwithstanding the distinct gift of the power of disposition."

The same doctrine is announced in 2d Washburn on Real Property, p. 381, m. p. 118.

In Johnson *vs.* Johnson, Jr., 7 Allen, 197, the principle is also recognized.

This case is not in conflict with the view of the law held by counsel for appellant; for in the case in Allen's Reports, the trust deed by the husband and wife (who joined to bar her right to dower) conveyed one-half of the estate to grantor, the husband, and into the wife for her life. The effect of the conveyance was to limit an undi-

vided one-half interest, for life, upon a person other than the real owner and grantor of the land. Such was not the effect of the alleged conveyance of Mrs. Tefft to Skinner. She could not be said to have granted to herself her own property during her life; and she did not affect to hold it herself to the use of another.

VI.

(*m*) In the *third* and *fifth* grounds of error, hereinbefore set forth, it is shown that, in no event, could the estate of Mrs. Tefft have been greater than ⅔ undivided interest. Then, should the court hold the paper to be a deed, it could not, in law, convey any title to Skinner, except the interest of the grantor.

Code, § 2260:

"No forfeiture shall result from a tenant for life selling the entire estate in lands; the purchaser acquires only his interest."

If Skinner, at death of Mrs. Tefft, became tenant in common with appellant, then he could sue for his possession only as follows:

Code, § 2303: "There can be no adverse possession against a co-tenant until actual ouster, or exclusive possession after demand, or express notice of adverse possession; in either of which events the co-tenant may sue at law for his possession."

So far from Skinner demanding possession as a co-tenant, the pleadings and proofs show that he demanded possession of the whole property as absolute owner, and began an action in the State court against appellant, under § 4072 of the Code, as an *intruder* upon his property!

Non constat, that the appellant would have refused him admission, claiming only as a co-tenant. Being only tenant-in-common, Skinner's own admissions and evidence make it imperative that the action of ejectment should be enjoined.

SEVENTH.

Because the court did not find and decree that, under the proofs and the law thereto applicable, the appellee, Darius S. Skinner, had no such estate in the lot in dispute as authorized him to maintain the action of ejectment sought to be enjoined. [This assumes that Skinner took nothing by the pretended *deed* of Mrs. Tefft.]

(*a*) If the appellant is the owner of four-ninths undivided interest in the premises, as shown in the *third* ground of alleged error, or of a still greater interest as shown in *fifth* ground, which is more likely correct, and even if the appellee, Skinner, has had bequeathed to him by the will of Mrs. Tefft, her entire interest in said lot; yet, he is not such tenant in common, as, under § 2301 of the Code, entitles him to bring ejectment for the whole property, or any share of it. This section sets forth: "Whenever two or more persons, from any cause, are entitled, simultaneously, to any property in this State, a tenancy in common is created." * * * *

(*b*) The appellee, Skinner, was not entitled to possession; for, granting that he was the heir-at-law of Mrs. Tefft (which he alleges but fails to prove), yet, the executors under the will would have the right to recover. Code, § 2246: "* * * Realty descends directly to the heirs, subject to be administered by the legal representative,

if there be one, for the payment of debts and the purposes of distribution. If there be a legal representative, the right to recover is in him; if there be none, the heirs may sue in their own name."

(*c*) And, whether or no Skinner was heir-at-law, there being a will, the title could not pass to him without the assent of the executor. Code, § 2451. "All property, both real and personal, in this State, being assets to pay debts, no devise or legacy passes the title until the assent of the executor is given to such devise or legacy."

The executors could not give assent before they proved the will, and it is admitted that the will has never been proven.

EIGHTH.

Because the court did not find and decree that, if the appellant was liable to an action of ejectment, in the interest of Skinner, it could only have been brought by the legal representative of the estate of Mrs. P. W. Tefft.

(*a*) The right to bring the action belonged, first, to the executor, after proving the will, as shown by section 2246 of Code, quoted above under *seventh* ground, page 52.

(*b*) If the executors both failed and refused to qualify or have the will proven, then Skinner could pursue the course pointed out in the following sections of the Code.

"§ 2430: Every person having possession of a will must file the same with the Ordinary of the county having jurisdiction; on failure to do so, the Ordinary may issue process as for contempt, and fine and imprison the person thus withholding the paper, until the same shall be delivered."

"§ 2434: The right to offer a will for probate belongs to the executor, if one be named. If the executor be dead, or non-resident, or refuses to act, or none be named, any person interested may offer the will for probate. * * * * "

[Of the two executors named, one was A. B. Ross, the friend of Skinner, to whose house he carried Mrs. Tefft to arrange about the will and testamentary paper called a deed. The other was Wm. S. Basinger, Esq., the conveyancer and counsel for Mrs. Tefft, and the special attorney of Skinner in this case.]

"§ 2435: The executor must offer the will for probate as soon as practicable after the death of testator, and must qualify, unless restrained by the will, within twelve months after the same is admitted to record. If he fails to offer it for probate for an unreasonable time, or is not qualified within the time specified, he shall be deemed to have renounced his right as executor."

"§ 2440: If no executor is appointed, or can or will serve, administration, with the will annexed, shall be granted by the Ordinary under the same rules as shall be prescribed for the granting of administration generally; and such administrator, when so appointed, shall have the powers of the executor, except such as manifestly arise from personal trust and confidence placed in the executor named."

"§ 2491: Administration with the will annexed is granted where the deceased died testate, but no executor appears to qualify and and execute the will."

(*c*) Thus, if Skinner took any interest at all from Mrs. Tefft, it was

solely under the will, which vested the right to obtain possession of the lot in her legal representatives. These representatives being citizens of Georgia, and Mrs. Walden also a citizen of Georgia, the court below would, in no event, have had jurisdiction of the action to recover.

(*d*) It is, however, unnecessary to investigate further the rights of Skinner under the will, for to whatever recovery those rights might entitle him or the executors after probate, they amount to nothing until the will is regularly proven, according to law.

NINTH.

Because the court below decreed that the injunction theretofore granted should be dissolved.

(*a*) The appellee, Skinner, having answered the bill, and submitted himself to the court, equity having jurisdiction for one purpose had it for all purposes. Story's Eq. Juris: §§437, 439. (1 Vol., 12th Ed.)

(*b*) Plaintiffs in ejectment must recover on strength of their own title, and not on weakness of defendants'; and before recovery can be had, plaintiffs must show not only paramount title, but right to possession. Scisson *vs.* McLaws, 12 Ga., 166.

(*c*) If appellee, Skinner, can only claim under the will of Mrs. Tefft, then it matters not whether she was owner of whole or part of the lot in dispute; for it vesting in her legal representatives, they must sue.

(See seventh ground of error, pages 52 and 53 of this brief.)

(*d*) Therefore, Skinner should have been enjoined from a further prosecution of the ejectment cause.

TENTH.

Because the court below decreed that the bill of appellant be dismissed.

RECAPITULATION OF APPELLANT'S GROUNDS OF ERROR.

FIRST.

Because the decree did not engraft upon the deed from city of Savannah to C. S. Henry, trustee, the same uses and trusts, in so far as they were applicable, as were set forth in the deed from Elias Fort to trustees for Mrs. Tefft, and her three sons. (p. 35.)

SECOND.

Because the decree did not, after reforming the said deed from the city of Savannah, further decree that upon the death of Mrs. Tefft, in 1873, the right to possess and dispose of said lot in dispute devolved upon the executors of said trustee, C. S. Henry; said disposition to be made in conformity with the deed of 1848, after having added to it the provisions and trusts of the deed of 1831, *except* those contained in the third clause of said deed of 1831. (p. 36.)

THIRD.

Because the decree did not ascertain and declare the interest of

the appellant in said premises in dispute to be four-ninths of the whole; *provided*, the said deed should be reformed, as set forth in the first ground. (p. 40.)

FOURTH.

Because the decree did not, if the refusal to reform the deed of 19th July, 1848, from the city to the lot in dispute was correct, proceed further, and find that, according to the terms of said deed, Israel K. Tefft, the husband of Penelope W., took an estate free from any trusts or charges in favor of his wife, and held it for his sons, their interest to be adjusted according to the amounts furnished by each to buy the lot and erect the houses. (p. 41.)

FIFTH.

Because the decree did not find that the lot and erections cost $8,909.41, and that of this sum William P. Tefft furnished, directly, $3,733.63; and that he also furnished, indirectly, $545.37; making the amount so furnished by him $4,279.00; and so making the share of said property, belonging to appellant, more than $\frac{4}{9}$ of the whole. And this even though the decree was right, so far as it failed to engraft the trusts of the Fort deed upon the deed from the city. (p. 42.)

SIXTH.

Because the decree did not find that the pretended deed of gift, of 28th September, 1872, from Mrs. P. W. Tefft to appellee, Skinner, was not a deed of gift, but a paper testamentary, and void even as a will because not properly witnessed. (p. 44.)

SEVENTH.

Because the decree did not find that the appellee, Darius S. Skinner, did not have, in law or equity, either under the conveyance from Mrs. Tefft, or under her will, any such estate as authorized him to maintain the action of ejectment sought to be enjoined. (p. 52.)

EIGHTH.

Because the decree did not find that if appellant was liable to an action of ejectment, in the interest of Skinner, it could only have been brought by the legal representatives of the estate of Mrs. Tefft. (p. 53.)

NINTH.

Because the decree was that the injunction be dissolved. (p. 54.)

TENTH.

Because the decree was that the Bill be dismissed. (p. 54.)

October, 1879.

Henry B. Tompkins,
R. R. Richards,
of Counsel.

Benj A. Hill

IN SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1879.

No. 176.

SARAH S. WALDEN, APPELLANT

AND

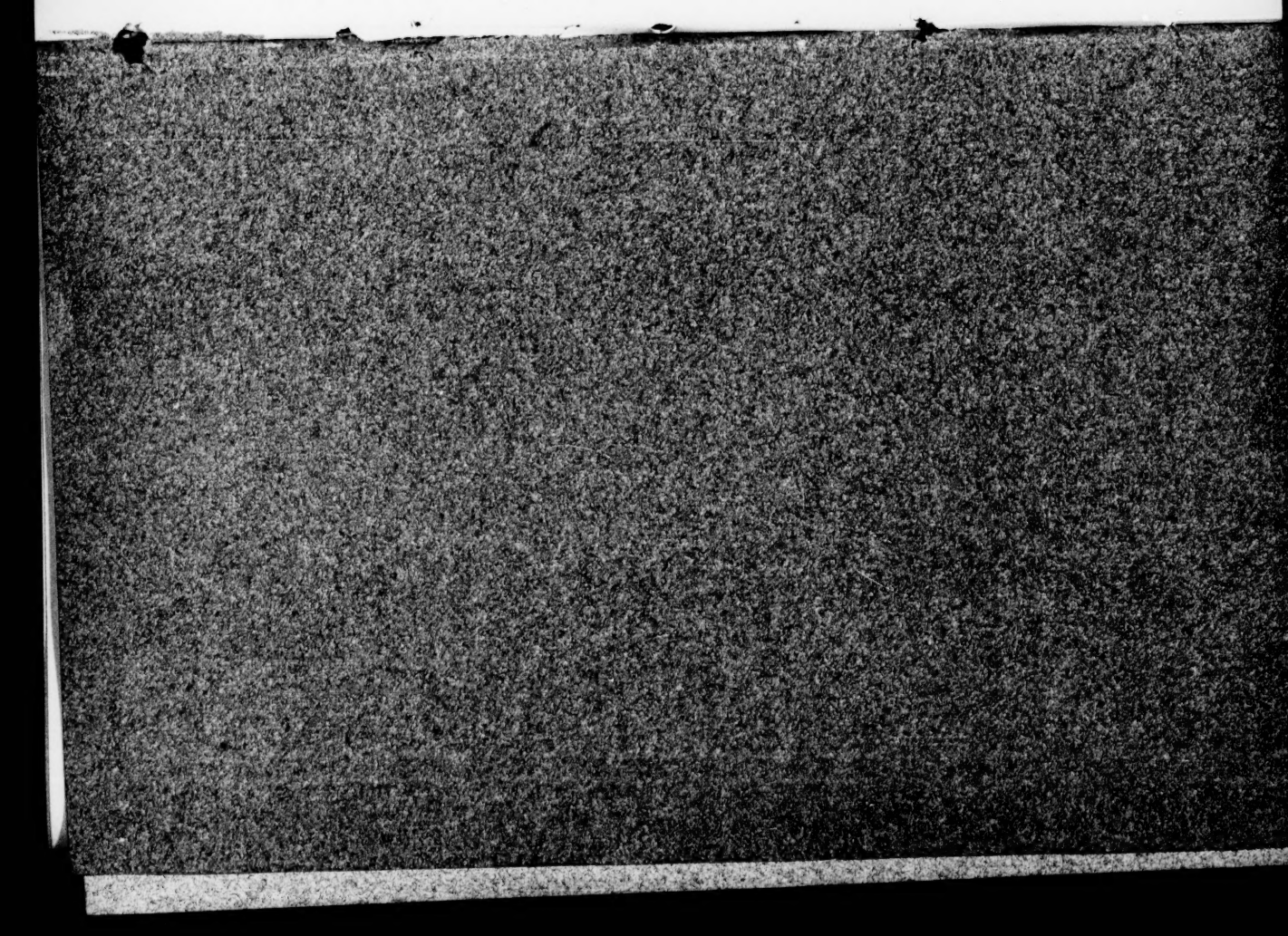
DARIUS S. SKINNER, ET AL.

APPEAL

FROM CIRCUIT COURT OF THE UNITED STATES FOR SOUTHERN DISTRICT OF GEORGIA.

BRIEF OF A. R. LAWTON, OF COUNSEL FOR SKINNER.

SAVANNAH NEWS STEAM PRINTING HOUSE.



SARAH S. WALDEN,
Appellant,
and
DARIUS S. SKINNER et al.,
Appellees.

In Supreme Court of the United States.
In equity.

BRIEF OF ALEXANDER R. LAWTON, OF COUNSEL FOR DARIUS S. SKINNER, ONE OF THE APPELLEES.

The controversy in this case practically involves the title to a lot of land in the city of Savannah, known in the plan of said city as Lot 5, Monterey Ward, with the improvements; and it is obviously between Mrs. Walden and Skinner alone—the other parties, defendant in the cause, the Executors of Charles S. Henry, being neither necessary nor proper parties to the cause.

It is apparent that Mrs. Walden and Skinner both trace their title to the same source, viz: The deed from the Mayor and Aldermen of Savannah to Charles S. Henry as trustee for Mrs. Penelope W. Tefft, dated July 19, 1848.

[See copy deed in printed transcript, pp. 9, 11.]

There were no other words in this deed to indicate an intention to create a trust than the description of Charles S. Henry as "trustee "for Mrs. Penelope W. Tefft, wife of Israel K. Tefft," in the statement of the parties, and the addition of the word "trustee" to Henry's name, where it occurred from time to time in the deed.

At that time, as appears from the bill, Mr. and Mrs. Tefft had three sons living, and no other children, viz: Henry D., William P. and Charles E., all then of age.

[See depositions of Mrs. Montmollin, trans. rec., 46.]

[See depositions of Mrs. Henry, trans. rec., 64.]

Henry died unmarried and intestate August 13, 1849.

William died August 9, 1852, intestate and childless—but leaving a widow, the complainant in this cause.

Charles died unmarried and intestate June 12, 1853.

I. K. Tefft, the father, died intestate June 30, 1862; his wife, Mrs. Penelope W. Tefft, surviving him.

The pleadings and evidence of the complainant show everywhere that Mr. Tefft always recognized that deed of 1848 as creating a separate estate for his wife, in which he had no interest, and always so conducted himself towards it. And it is, obviously, not material to consider now whether it did so or not. If it did, the trust became executed upon his death, and the legal and equitable titles were then united in his widow. If it did not, the title vested in him at the moment of the delivery of the deed—(Henry, the trustee, being a mere conduit)—by virtue of his marital rights; and when he died,

it passed to his widow by the operation of the statute of distribution of the State of Georgia. In either case, tracing her title to this deed, Mrs. Tefft was the sole owner of the property, at law and in equity, from the death of her husband.

Mrs. Tefft survived her husband more than eleven years, continuing to own the property, and died September 11, 1873.

On September 28, 1872, a year before her death, by her deed of that date, she conveyed the property to Skinner in trust for her own sole and separate use during her life, with remainder in fee to himself at her death.

[See copy deed in printed transcript, pp. 15, 16.]

On the same day she made a will, in which she confirmed the aforesaid conveyance to Skinner. [See copy will in transcript, pp. 7–8.] Skinner was, besides, the nephew of Mrs. Tefft—the only surviving child of her only sister—and, therefore, her only heir-at-law, according to the distribution laws of Georgia in force then and now. [See Skinner's answer, transcript, p. 26.]

Act of 1804, Cobb's Digest, 291.

Code of Georgia of 1873, §2484.

Thus, whether Skinner claims as grantee, devisee, or heir-at-law, his title to the property appears to be perfect and complete, unless something be shown to the contrary. Mrs. Tefft was living upon the lot when she died. The complainant was in attendance upon her, an inmate of her house. She took possession immediately, and refused to surrender it to Skinner when demanded by him under his title above set forth. He commenced an action of ejectment for it against her on the common law side of the United States Circuit Court for the Southern District of Georgia. And thereupon the complainant filed her bill on the chancery side of the same Court for an injunction, and to set up certain claims of her own to the lot in dispute. Skinner submitted to the injunction and answered the bill. And upon the final hearing the bill was dismissed.

The complainant alleges in her bill that when the aforesaid deed of 1848 was made and delivered, Charles S. Henry was already surviving trustee for Mrs. Tefft and her three sons, under a conveyance of another lot in said city, known as lot 23, Warren Ward, dated June 28, 1831, made by one Fort to the said Henry and one Greene, as trustees. A copy of this deed is attached to her bill as an exhibit. [Transcript, pp. 8–9.] By this deed the property therein specified was conveyed to the said Henry and Greene to be held by them upon the following trusts and confidences, that is to say:

1st. Upon trust to have and to hold the said lot, etc., to and for the sole and separate use, etc., "of the said Penelope W. Tefft during "her lifetime, and Henry D., William P., and Charles E., and after "the death of the said Penelope W., as tenants in common in equal "parts."

2d. Upon trust, to sell that property at any time during Mrs. Tefft's life upon her application and consent, signified by her being a

party to the conveyance, and to reinvest the proceeds in such other property or manner as she should direct and request, "upon the same "trusts as aforesaid."

3d. Upon trust, if Mrs. Tefft should not, during her lifetime, request that property to be sold as above provided for, then to have and to hold the same for the sole use, etc., "of the said children, or "the survivor or survivors of them, share and share alike, until the "youngest shall arrive at the age of twenty-one years, at which time "the said parties of the second part (the trustees), upon the request of "the said child or children, are hereby authorized to sell and convey "the said lot and improvements as aforesaid, subject to the ground-"rent aforesaid, for the best price which can be obtained for the same, "and the proceeds thereof to pay and divide among the said children, "or the survivor or survivors of them, share and share alike."

The complainant alleges that it was intended (though she does not say by whom intended) that the deed from the Mayor and Aldermen to Charles S. Henry, trustee, should convey lot 5, Monterey Ward upon those trusts, but that it failed to express that intention; and her prayer on that head is that the deed be reformed accordingly—claiming that Mrs. Tefft and her three sons, under the Fort deed of 1831, were owners in common of the lot in Warren Ward, as *cestuis que trust*—that her husband, William Tefft's interest, being originally one-fourth, became one-third upon the death of his brother Henry, by inheritance from him, and then devolved upon her, upon her husband's death, as his heir-at-law. And in connection with this, she prays that Mrs. Tefft's deed to Skinner, of September 28, 1872, may be declared void.

Her second position is, in substance (although it is difficult to determine from the bill whether it is intended as alternative or additional to the first), that she is entitled, as heir-at-law of her husband, William Tefft, to an interest in the property under an implied trust for his benefit. And the allegations upon which she proposes that this trust be implied and the amount of it ascertained, are as follows:

She says that the lot cost $241, and the improvements $9,934.69. Averring nothing as to the cost of the land, she says that, of the cost of the improvements, $5,634.69 were contributed by I. K. Tefft out of his personal resources; which sum, "by the express wish of the said "I. K. Tefft, went into the construction of the said buildings and "became a part of the trust estate so held by said C. S. Henry, as "trustee for said P. W. Tefft and her children, or for said children "solely; and that upon the death of said Henry D. Tefft, one-half "of such interest as he had in said trust vested in said Wm. P. Tefft "as one of the *cestuis que trust* then surviving."

She says that on July 30, 1849, the lot No. 23, Warren Ward, was sold under the terms of the Fort deed for $2,400; and that all of the purchase money except $600, "the portion of said Penelope W. Tefft, "was put into the improvements on lot 5, Monterey Ward, by C. S. "Henry, trustee as aforesaid, for the benefit of said three other "*cestuis que trust* and their legal representatives;" and that after the

"death of the said H. D. Tefft, one of the three beneficiaries for said "fund so put into said house, her husband, Wm. P. Tefft, became "entitled to one-half of the said trust fund of eighteen hundred "dollars."

She says that Henry Tefft had insurance on his life to the amount of $5,000, which was collected by his administrator after his death; and that $2,500, one-half of said sum, falling to the share of his brother, Wm. P. Tefft, was by him "paid over to his father, I. K. "Tefft, to be invested in the improvements then being erected on said "lot No. 5, Monterey Ward, and that said sum of money was in fact "invested in said improvements by and with the knowledge and con- "sent of the said C. S. Henry, trustee as aforesaid," and became "an "equitable charge upon the premises."

It thus appears that she claims an interest in the property, under the trust she proposes to have implied from the foregoing allegations, having the same ratio to its value as $7,117.34, the amount of the alleged investments, bears to $10,175.69, the alleged total cost of the land and improvements. She does not state this so distinctly in her bill—but if she states any case at all, that is it.

And, by way of clinching her allegations, she says that Mrs. Tefft admitted that she was part owner of the property with herself; and that she occupied the premises from time to time as such, not only without dispute, but with express recognition of her right.

And, upon this branch of her case, she prays the Court to decree the real interests of herself and Skinner in the property, and to direct the executors of Henry either to make conveyance of those interests or to sell for a partition and divide the proceeds under the instructions of the Court.

In thus analysing the complainant's bill, a view of it has been taken most favorable to herself. It is not at all clear that she took that view of her case—that she did not mean rather to place herself upon her construction of the Fort deed of 1831, insisting alone upon the alleged intention that the deed of 1848 from the Mayor and Aldermen was intended to convey lot 5, Monterey Ward, upon the trusts of the Fort deed, and stating the other facts as evidence of that intention. It may be so. And then the question arises whether, by insisting on that theory, she does not show herself wholly destitute of foundation for her claim.

For her idea that under the Fort deed Mrs. Tefft and her three sons were tenants in common is entirely inadmissible. It is too plain for argument that it created only a life-estate in Mrs. Tefft, with remainder over. And the only possible question that can be made upon the deed is what sort of remainder it was. The complainant may insist with almost equal advantage to herself that it was a vested remainder in the three sons in common. But we contend that even this view cannot be sustained; and that the remainder was to *such of her three sons as should be living at the time of her death.*

The former view can be maintained only by wholly rejecting the

third part of the *habendum et tenendum* clause. But the rule that where there are two inconsistent clauses in a deed the former shall prevail, is applied only when the two clauses are "utterly inconsist-"ent" and irreconcilable. The intention of the parties must be ascertained from the *whole* instrument; the whole deed must be looked to in arriving at the construction of any part.

[Code of Georgia of 1873, §2697, 2757.]

Much more is this true where the apparent inconsistency occurs in the same clause. The *hab. et ten.* clause in a conveyance of real estate—that which states the purposes for which the conveyance is made—is one clause by itself. If the conveyance be upon trusts or conditions, all the trusts and conditions must be considered in order to ascertain their exact extent and limits. So, in this Fort deed, the property was conveyed to Henry and Green "to have and to hold" it in trust; and the fact that the conveyancer chose to number the paragraphs in which he described the trust, in some arbitrary manner devised by himself, does not convert the clause from one into three. It is still necessary to examine the whole clause to determine the meaning and force of any part of it; and then each part will receive its due weight as explanatory of every other part. And thus a meaning which might be ascribed to one part if taken by itself, will oftentimes be discovered to be manifestly impossible upon reading it in connection with some other part relating to the same subject.

Upon these principles, it will be found that there is no discrepancy between the different portions of the *hab. et ten.* clause in this deed.

Obviously, the deed conveyed the property to the trustees for the use of Mrs. Tefft for her life, with remainder over, and with the power and duty to sell and dispose of the proceeds under certain restrictions and conditions differing with the time and circumstances under which the power should be exercised. During the life of Mrs. Tefft the power could only be exercised upon her request and with her concurrence, and the proceeds were to be reinvested upon the same trusts. Should the power not be exercised during Mrs. Tefft's life, then it could not be exercised until the youngest of the three sons surviving her should arrive at the age of twenty-one years; and then it was to be exercised only upon the request of the surviving sons, and for the purpose of dividing the proceeds, "share and share "alike," among such surviving sons. Thus the last clause explains the first—and it appears from the whole that the parties had in view the possibility that some of the three sons named might die before their mother—and that the intention was that, upon Mrs. Tefft's death, the title should vest in such of the three sons as should be then living, as "tenants in common." No reference is made to the heirs or assigns of any son who should die before his mother; on the contrary, the persons who should take upon the death of the mother are distinctly specified as the survivor or survivors of the said three *sons*.

The only other possible construction of the whole clause is one

which ascribes to the parties an intention that, though the property conveyed and any other substituted for it by re-investment, should be held for the use of Mrs. Tefft during her life, with vested remainder to the three sons as tenants in common, yet, if she should die without such substitution, the estate of the sons should change, and vest only in the survivor or survivors, an intention for which no conceivable motive can be suggested, and inconsistent with the general scheme of the trust.

We contend, therefore, that this construction is the true one—and that the estate conveyed was for the use of Mrs. Tefft for her life, with remainder to such of her three sons as should survive her as tenants in common, and if only one should survive her, then to that one in fee.

The case of Dudley et al. vs. Porter, in 16 Ga., is strikingly analogous to the present. In that case the *hab. et ten.* clause created unmistakably an estate-tail, taken by itself. But at the conclusion of the deed, even after the warranty clause, another clause occurred so modifying the former that the Court below held it inconsistent with the former, and rejected it altogether. But the Supreme Court reversed the judgment, and decided, upon the reasoning we employ now, that the last clause ought to have been considered in seeking for the intention of the grantor—that the two ought to have been construed together—and that, so construed, the deed did not create an estate-tail, but "an estate for life in the first taker, and a fee to her "children by her then husband; and that if she should die without "such children living at her death," then to the other persons specified.

Dudley et al. vs. Porter. 16 Ga., 613, 615–16.

Says Judge Clifford in Donahoe et al. vs. Kettell et al.: "If, "from a view of the whole instrument, the evident intention of the "parties is different from the literal import of the terms employed "to express their intention in a particular part of the instrument, "that intention should prevail, notwithstanding it may appear to be "inconsistent with such particular part, for the reason that the con- "struction of the contract in the case supposed ought not to depend "on any formal arrangement of the words, but should be collected "from every part of the same as applied to the subject-matter to "which it relates."

[Donahoe vs. Kettell. 1 Cliff. C. C., 135.]

If this view of the Fort deed be sustained, it is unnecessary to seek the exact place of the estate limited to the three sons in the usual classification of contingent remainders. It suffices that it *was* contingent—and, as such, not alienable nor transmissible by descent or under the statute of distributions. Therefore, when Henry Tefft died, his contingent interest perished with him, and did not pass to his heirs-at-law; his two brothers were then sole remainder-men as his survivors, according to the deed, and not by inheritance from him. And when William died, his contingent interest did not pass to his widow as his

heir-at-law—but Charles remained as the sole survivor of the three persons appointed to take. And thus, the more perfectly the complainant shows that the deed from the Mayor and Aldermen to Chas. S. Henry, as trustee, was intended to be upon the trusts of the Fort deed, the more clearly she shows that she has no case.

But, in any event, do the pleadings allege or the evidence show any such mistake in the deed from the Mayor and Aldermen to Henry, trustee, as ought to induce a Court of Equity, after the lapse of thirty years, to disregard the terms of the deed, and intrude into it the other terms now insisted on by the complainant?

The principles upon which Courts of Equity will thus interfere are perfectly well established. As the question is of title to land in Georgia, it may be assumed that even a Court of Equity of the United States will be governed by the law of Georgia on such a subject. And we need not look beyond the Code of Georgia for the law in such cases.

[Code of 1873, §3117, 3121, 3124–6.]

The allegations and proof must both be "clear, unequivocal, and "decisive;" and the Court must determine with caution whether there be sufficient reason for disturbing a solemn written conveyance. Moreover, the mistake must not have been confined to one person; it must have been common to the party seeking relief, and the party against whom it is sought; and, through them, to the persons under whom they claim.

In the allegations, and consequently in the evidence setting up the mistake, there must be certainty to a certain intent in every particular; the Court must not be left to inferences and conjectures, but should be able to discover at least a *prima facie* case.

Says the Supreme Court of Georgia: "A Court of Chancery is "very slow in exerting its authority to reform alleged mistakes in "written instruments; and it requires the clearest and strongest "evidence to establish the mistake. It is not sufficient that there "may be some reason to presume a mistake. The evidence must be "clear, unequivocal, and decisive; not evidence which hangs equal "or nearly in equilibrio."

[Wall v. Arrington, 13 Ga., 88.]

And the foregoing language is copied from the decision of Judge Story in United States v. Monroe.

[5 Mason, 572–7.]

According to these principles, did the *pleadings* in this case suffice?

Can the Court discover from any part of the bill upon whom it is proposed to fix the alleged mistake? Can the Court perceive anywhere that any mistake in this matter is alleged of Mrs. Tefft?

On the contrary, the only allegation in the bill on this subject is as follows: "Your oratrix avers that said conveyance (meaning that "from the Mayor and Aldermen to Henry, trustee,) is informal and "incomplete, etc.; that it fails to set forth and express the trust "interests of the three aforesaid children of P. W. and I. K. Tefft,

"and that it should be reformed and made to conform to the purposes "of the trust as created and set forth in the original trust deed "hereinbefore referred to as Exhibit B (meaning the Fort deed).

And so far as the letter from I. K. Tefft to his son William is concerned, which is attached to the bill as Exhibit D, if it is of any value at all, it shows that Mrs. Tefft was insisting at that very time that the title from the city should be for her benefit alone; that the very thing should be done which was in fact done, and which the complainant says was done by mistake.

[See printed trans. of rec., pp. 12–13.]

Does the *evidence* show that there was any mistake in the deed from the Mayor and Aldermen to Henry, trustee?

The answer and depositions of Skinner deny it in so many words.

[See answer in printed trans. rec., p. 24–5.]

[See depositions, printed trans. rec., pp. 99, 100.]

The evidence on which the complainant mainly relies to prove it consists of her own depositions, and those of the following witnesses: Mrs. Montmollin and Mrs. Palin, Mrs. Henry, Jos. Johnson, Monday Habersham. Although other witnesses deposed to various things they had heard in relation to the family affairs of the Teffts, there seems to be nothing in their testimony which bears immediately upon this question.

Let us now examine first in their order the depositions of the witnesses other than complainant herself.

Mrs. Montmollin says she was present when Judge Henry called to get the money to pay for the new lot, No. 5, Monterey Ward—that Mr. Tefft and his three sons each produced $60 and gave it to Judge Henry for that purpose—and that it was then agreed by all parties that that lot 5, Monterey Ward was to be held for the same uses and trusts as the old lot on St. Julian street, viz: for Mrs. Tefft and her three sons. It is almost a pity to cast doubt on the occurrence of so dramatic a scene; but, on the supposition that Judge Henry called for the money only when it was wanted, and honestly applied it when he got it, it will be seen, upon reference to the conveyance of lot 5, Monterey Ward (printed trans., rec. 9–12), and the receipt of the City Treasurer attached, that this money was paid September 8, 1848; whereas the deed itself was executed on July 19, 1848, two months before—when it was altogether too late to prescribe anything as to the terms of it unless another deed were demanded.

Moreover, the phrase "*all parties*" employed by the witness could not have included Mrs. Tefft—for the witness, as well as Mrs. Palin, who was examined with her, had already stated in answer to a previous interrogatory, that Mrs. Tefft always insisted that the title for the new lot should be for herself alone.

[Printed trans. rec., 45.]

And, if Mrs. Tefft did not enter into the alleged agreement, it would appear that her husband, who had no interest in the matter at all, and her three sons, assumed to dispose of the question contrary to her wishes.

Mrs. Lewis said she had repeatedly heard Judge Henry and Mr. and Mrs Tefft speak of the uses and trusts of the new house, but she does not say what they were except by implication.

Mrs. Henry said that she heard from her husband and from Mrs. Tefft and her children that the new residence was held or intended to be held upon similar uses and trusts to the property conveyed by the Fort deed. But it is clear that she speaks only of general and loose conversations. And she also declared that Mrs. Tefft insisted that the title to the new lot should be in her own name, and did not agree that it should be in any other way.

[Printed trans. rec., 63–4–5.]

Joseph Johnson "was informed" in general conversation (he does not say by whom) that the new house belonged to the family in the same way the old house had been held.

[Printed trans. rec., 70.]

Monday Habersham said "I have heard Mrs. Tefft frequently say "that this new house and lot were to be held on the same uses and "trusts as to her and her children as the old house had been held "on St. Julian street."

[Printed trans. rec., 83.]

But who does not perceive that this witness—a freedman—formerly a slave, could not have conceived, much less intended to express a notion so clear on a subject so technical? Who does not perceive that the phrase quoted from his deposition was not and could not be his own? and that, whatever he may have said was translated into the sentence as written by the scribe who took down his statements, and expresses, rather the views or expectations of the scribe as to what the witness said or was expected to say, than what he actually did say.

Besides these direct statements, there are several references to loose conversations, occurring in the careless freedom of private intercourse, most of them long subsequent to the transaction under consideration, and all of them of the character of mere hearsay, which are now brought up to prove a mistake in a solemn and formal written muniment of title.

We turn now to the depositions of Mrs. Walden herself.

She also says that the lot 5, Monterey Ward, was to be held on the trusts of the Fort deed.

[Printed trans. rec., 40–41.]

But she also states in the most distinct terms that Mrs. Tefft required the title to the new lot to be in her own name.

[Printed trans. rec., 40.]

In short, it stares us in the face at every turn that Mrs. Tefft insisted upon this. And when we find the witnesses for the complainant saying that it was "understood," or "agreed," etc., it is necessary to bear in mind that Mrs. Tefft was not included among the "parties" so "understanding" or "agreeing." And when we find that the deed from the city to Henry, trustee, was actually made in

accordance with her views and wishes, as proved by so many persons, it is impossible to resist the conclusion that her wishes prevailed. And in order to establish the claim of the complainant, it is necessary for her to show that the deed from the city failed to express the wishes of *Mrs. Tefft*. What other persons wished is of no importance.

It is to be observed, also, that all the three sons were of age in 1849.

[See depositions of Mrs. Montmollin and Mrs. Palin. Printed trans. rec., 46. Also, depositions of Mrs. Henry. Printed trans. rec., 64.]

And that they had notice both of the Fort deed and the deed from the Mayor and Aldermen to Henry, trustee. Notice of the former is presupposed by the complainant's case. The latter, dated July 19, 1848, was recorded in March, 1849.

[Printed trans. rec., 12.]

And the record, under the law of Georgia, was notice to all the world.

We are obliged to assume that the contents of both were fully known to all the sons; in other words, at the very time William Tefft is represented to have been making a bargain with his father at the expense of his mother, the deed which made the bargain impossible was on the records of the county in which the land lay, and known to him and all the world. If he, or either brother, had had any idea of objecting to it as contrary to the intention of any one concerned in the property conveyed—informed, as they were, of what their mother demanded—he ought to have made known his objections on the spot. If either of them neglected to do so, neither a court of law nor one of equity can repair the omission after the lapse of thirty years, especially upon such evidence as is now presented—evidence which is not, as required by the Supreme Court of the State in Wall v. Arrington, "clear, unequivocal, and decisive," "not hanging equal "or nearly in equilibrio."

Nor does the investment of money by either of the sons in improvements upon the lot 5, Monterey Ward, furnish any such evidence of an intention with regard to the deed for that lot as will justify a court in assuming that there was a mistake in that deed. Suppose such investments were in fact made as stated in the bill—then it does not appear either from the bill or the evidence that Mrs. Tefft consented to the arrangement. Several witnesses do, indeed, say that they heard Mrs. Tefft speak, after these transactions, of her sons' investments in the new house; but no one of them swears that she ever referred to it as having been done by her desire or with her consent. On the contrary, the fact remains, established by complainant's own evidence, by the alleged letter of Mr. Tefft, by the depositions of complainant, of Mrs. Montmollin, Mrs. Henry and others—that she never did acquiesce in the arrangements made—that she did insist that the deed should be in her own name. When we couple this conspicuous fact with the fact that the deed was ac-

tually made as Mrs. Tefft wished it, it may be inferred, indeed, that Mr. Tefft intended and attempted to thwart and defeat his wife's wishes; but it is clear that he failed in the attempt. There is no evidence that either of his sons had any defined intentions or troubled himself about the matter.

And we may conclude that the Court will not, upon evidence like this, reverse the decree of the Circuit Court which adjudged that nothing appeared to impeach the deed from the city to Henry, trustee, according to its terms.

But the decree adjudged also that nothing appeared to incumber the title conveyed by that deed with any trust, express or implied, in favor of the complainant or any other person through whom she claims.

In considering the evidence on this point it must be borne in mind that "a trust is never presumed or implied as having been intended "by the parties, unless, taking all the circumstances together, that "is the fair and reasonable interpretation of their acts and transac-"tions."

[Story's Equity Jur., §1195, 1202.]

The rule has been stated to be that a Court of Equity will not imply or presume a trust except in case of absolute necessity. But we take Story's modified version of the rule as more favorable to the complainant.

Bearing this fundamental rule in mind, the first thought that presents itself is that, whatever the trust was, all parties knew they were dealing with a trust estate. Whether the lot 5, Monterey Ward, was held under the trusts of the Fort deed or that of the City's deed, they all knew the property was subject to a trust of some sort. They knew, or must be supposed to have known, of the terms of the deed from the Mayor and Aldermen, and of Mrs. Tefft's steady refusal, already shown by the evidence adduced by the complainant, to consent to have that deed in any other terms. If, therefore, William and Charles, or either of them, contributed any money to improve that lot, they did so with their eyes open, and must be understood to have had in contemplation all the circumstances of the case, and to have voluntarily taken all the chances of the situation. They could not have expected to have the trust changed for their benefit, or to make a bargain with their father, or with their mother's trustee, contrary to the known wishes of their mother, which could add any new terms to the existing trust. Their father had no interest in the property, and the trustee had no power to bind the trust estate by any bargain or agreement whatsoever. Nor, indeed, had Mrs. Tefft, as *cestui que trust*. And if any one, with knowledge of the fact, as the sons had, chose to expend money in the improvement of the trust estate, he did it at his own risk. And if William Tefft did this under any agreement or understanding with anybody, it is apparent from all the evidence that he had no understanding with his mother—but, at best, with his father or with his mother's trustee. There is not a

syllable in the evidence anywhere to show that any one authorized to make such a contract ever did make it. And without some evidence of such an understanding with some authorized person it would seem impossible to imply a trust.

But let us look a little more minutely into the pleadings and evidence on this subject.

1. It is alleged that Mr. Tefft contributed $\$5,634\frac{65}{100}$ to the improvements, with the wish that it should enter into and become part of the trust estate ; and the bill was sworn to.

It is difficult to understand by what right Mr. Tefft could annex to this contribution, *if he made it*, any stipulations whatever, which could affect the trust.

The answer does not admit this allegation. And the complainant, in her own depositions, shows that it was not true—for she swore, in them, that the total amount contributed by Mr. Tefft was $850.

[See printed trans. rec., 40.]

No other witness makes any statement on this subject.

2. It is alleged that $1,800 of the proceeds of the sale of the Warren Ward property went into the new property—of which, in consequence of the death of Henry Tefft, half, or $900, belonged to William. But, even if the money was so disposed of, it has already been made to appear that the theory that any part of those proceeds belonged to William is without foundation. The mother and sons were not tenants in common of that property. And however the deed under which it was held may in other respects be construed, it is clear that Mrs. Tefft had a life estate in it—that the proceeds of the sale became subject to that life estate—that it was the duty of the trustee to re-invest those proceeds subject to that life estate in the manner prescribed by Mrs. Tefft—that any other investment was contrary to law and his duty under the deed, and left him responsible for the fund—that the sons had no right to give any direction whatever to the proceeds—that Mrs. Tefft, by the evidence of complainant and her witnesses already cited, not only gave no directions for the alleged disposition of them, but actually objected to it—and that, if it was done at all, it was done in spite of her. The money was not William's money—it was spent upon these improvements against her will—and surely no trust can be implied for William as to this fund upon facts like these.

3. It is alleged that William contributed his half of his brother Henry's life insurance for $5,000 to the new house, or $2,500. But his returns as administrator of Henry's estate shows that this amount was only $2,123.64.

[See printed trans. rec., 139.]

Skinner denies, both in his answer and his depositions, that William contributed this money, and avers positively that he did no such thing, but that Charles did.

[See answer printed trans. rec., 26.]

[See depositions printed trans. rec., 100.]

It further appears that at this very time William Tefft was insolvent; becoming so in 1849, and continuing so until his death.

[Skinner's answer printed trans. rec., 26.]

[Skinner's depositions printed trans. rec., 100, 101.]

[Ross' depositions printed trans. rec., 116.]

[Habersham's depositions printed trans. rec., 84.]

[Dr. Arnold's depositions printed trans. rec., 56.]

[Rhind's depositions printed trans. rec., 44.]

The only witness who positively affirms this disposition of William's share of the insurance money is Mrs. Walden herself.

[See depositions printed trans. rec., 40.]

The other witnesses for complainant only say they heard it in the family—sometimes from one member of it, sometimes from another—sometimes even from Mrs. Tefft herself. But none who heard it even from Mrs. Tefft herself, or who state any remarks she may have afterwards made on the subject, have contradicted the fact of her objection when the thing was done.

It is further alleged in the bill, however, and the depositions contain numerous statements, that Mrs. Tefft admitted that complainant had an interest in the property at least equal to her own—recognized complainant's claim to such an interest—and that complainant lived on the premises at her pleasure as part owner thereof.

[See bill in printed trans. rec., 4.]

[See complainant's depositions in printed trans. rec., 41.]

[See depositions of Mrs. Montmollin and Mrs. Palin in printed trans. rec., 46–7.]

[See depositions of Mrs. Lewis, trans. rec., 48–9–50.]

[See depositions of Miss Thompson, trans. rec., 53.]

[See depositions of Geo. Nutall, trans. rec., 57.]

[See depositions of Mrs. Cass, trans. rec., 58–59.]

[See depositions of Mrs. Henry, trans. rec., 65–6.]

[See depositions of W. E. Doane, trans. rec., 86–7.]

[See depositions of Mrs. Doane, trans. rec., 89.]

It is worth while to consider the true force and meaning of the statements above referred to, whether taken by themselves or in connection with other statements of the same or other witnesses.

It was to be expected that Mrs. Walden would be sufficiently emphatic. But as corroborating her assertion that Mrs. Tefft admitted her title, she seeks to make it appear that she lived in the house all the time after the death of Mr. Tefft, as part owner. But it is very certain, if other witnesses are to be believed, that she did no such thing.

Mr. Rhind says that "Mr. and Mrs. Tefft always occupied and "treated the house as their own in all respects," and that he "never "knew of Mrs. Walden's exercising any acts of ownership over it "during Mrs. Tefft's life."

[See depositions of Rhind, in printed trans. rec., 44.]

Mrs. Montmollin and Mrs. Palin state the alleged admission very

positively; but they add that "Mr. and Mrs. Tefft used, occupied, "and treated the house as their own in all respects—even to the "extent of renting it out." It is true, they also say Mrs. Walden was consulted, etc., but that is fully disproved by other evidence.

Mrs. Lewis says that after the death of William Tefft she had often heard Mr. and Mrs. I. K. Tefft say the house was her home, and that she had a right to it as any other member of the family. But this statement shows the true character of anything Mrs. Tefft is reported to have said. It was natural enough for parents, naturally kind, and with hearts intenerated by the death of a son, to regard his widow with kindness, and speak of her and treat her as a member of their family in his place. And to say she had a right there as any other member of the family, was only what any parent might say of his son. But this witness also says that Mr. and Mrs. Tefft, after moving into the new house, "treated and occupied it as their own in "all respects;" that "Mrs. Tefft, after the war, rented out the house, "and that she never knew Mrs. Walden to rent out or otherwise "treat said house as her own during Mrs. Tefft's life."

Miss Thompson says she derived her knowledge of Mrs. Walden's claim from Mrs. Tefft as well as Mrs. Walden; but she also says that "Mrs. Walden did not treat the house as her own before Mrs. Tefft's "death," and "that Mr. and Mrs. Tefft, from the time of their remo- "val into the new house to their death, occupied and treated it as "their own in all respects," and that "Mrs. Tefft, during and after "the war, rented it out."

The statements by Nutall, of casual remarks made by Mrs. Tefft in his hearing while he was at work in the house, and for reasons already given, are entitled to little weight.

Mrs. Cass says she "heard Mrs. Tefft say, a few months before "her death, that Mrs. Walden had a claim to said house." But she adds, in the very next sentence: "She said, 'I will not leave my "property to any man; men can work; Sarah Walden has a claim "on the property; she is entitled to it; I will leave it to her.'"

This shows with perfect distinctness that Mrs. Tefft was not thinking of any *legal* claim, but only of her superior claims, as a woman, to her bounty and consideration.

Mrs. Henry, while stating that Mrs. Tefft admitted a claim in Mrs. Walden, shows that it was only a moral claim—such a claim as a widowed daughter has to a home under a parent's roof.

The evidence of Mr. and Mrs. Doane goes too far, and is worth nothing; for they represent Mrs. Tefft as making statements contrary to the facts as alleged in the complainant's bill itself.

Turning now to the evidence for the defendent on this subject, we find that Skinner denies Mrs. Walden's statement in his answer.

[See answer, printed trans. rec., 26.]

And his depositions as to remarks made to him by Mr. and Mrs. Tefft show very decidedly what they meant when they said Mrs. Walden had a right to a home with them, or claims upon them.

A part of this evidence we quote:

"Mr. Tefft stated to me on his visit to my house in 1860, after "Mrs. Walden had married Walden, that he felt a great relief in "having her off his hands, for that, as the widow of his son, himself "and ma had felt it incumbent on them as a duty to their dead son, "to give her protection and a home and support as long as she "remained unmarried and chose to accept it, as William had died "entirely insolvent, and as they knew her father was in the same "condition, hopelessly insolvent; her father's family being scattered, "and her father about that time being in a pauper asylum at Provi- "dence, R. I.; that ma was particularly urgent for him to do so; that "Sarah (Mrs. Walden) had come and gone from their house at her "pleasure up to the time of her marriage with Walden; that both "ma and himself felt that they had entirely complied with their "promise to her of a home and support as their son's widow. My "aunt, Mrs. Tefft, was present when he said the above, and she "added, as she was William's widow, we could not do otherwise; but "as she is now married, I hope she may do well, and am truly glad "to be relieved from her future support and having the responsibility "of her acts to meet any further. If she had remained unmarried "I would have always given her a home in my house, and Mr. Tefft "would have supported her. In 1872, Mrs. Tefft said to me that "Sarah had come to them in trouble after her husband's (William's) "death, and upon their invitation as a guest, and dependent on them "as their son William's widow. In another conversation with Mrs. "Tefft, about the same time, * * * she most emphatically de- "clared that she owed nothing to Mrs. Walden for her services or "otherwise, and that Mrs. Walden was then at her house upon her "invitation as a guest, as she ever had been when there, and that "while she stayed there, she (Mrs. Tefft) paid for her meals at Mrs. "Thompson's and supported her. In another conversation with my "aunt, a day or two after the preceding one, she represented the "same to me, and added: 'She is here now, as she always was when "your uncle was alive, as our guest, and I support her now, as we "did then, at my expense, and she has not now nor ever had any "claims on me, my house, or my property, with the exception of "being the widow of my poor dead son William.'"

[See Skinner's depositions, trans. rec., 101–2.]

The last sentence of this statement is specially significant when collated with the almost contemporaneous remark of Mrs. Tefft to Mr. Basinger, that she had "*recently* found reason to think that Mrs. "Walden pretended to some claim against the estate of the late "I. K. Tefft, her husband, or against the house, she did not under- "stand which, nor did she understand what the claim was."

[See depositions, trans. rec., 123.]

And Mrs. Tefft's letters, attached to Skinner's depositions, show that she was, at this date at least, renting the house as her own and for her own benefit, and that Mrs. Walden was doing what she could for herself.

[See trans. rec., 106, 107, 113, 114.]

Andrew M. Ross was Mrs. Tefft's agent for some time to collect her rents, etc., and there is not a syllable in his evidence or that of Mrs. Ross to indicate that they ever knew Mrs. Walden in any other character than that of a mere inmate of the house. On the contrary they affirm that Mrs. Tefft alone exercised acts of ownership over the house.

[See depositions, trans. rec., 116, 118.]

Ann Rose Alexander lived in Mrs. Tefft's house for six years before the death of the latter—that is, from 1867 to 1873, and knew her altogether for twenty years. Her testimony is distinct that Mrs. Walden visited Mrs. Tefft but twice after the war. The first time she remained three or four months. The second time, she came two or three months before Mrs. Tefft's death, having been sent for by her under the persuasions of Miss Thompson; and she has been there, it may be added, ever since. This witness well explains the nature of Mrs. Walden's claim. Mrs. Walden said her mother "(Mrs. Tefft) "ought to give the house to her," that is, she thought she had equitable claims upon her kindness and consideration—"but Mrs. Tefft "said she would do no such thing, but intended to give it to her "nephew, Darius S. Skinner."

[See depositions in trans. rec., 130.]

Edward C. and James B. Mathews, servants of Mrs. Tefft, both affirm her sole control of the property. The former says Mrs. Walden visited her occasionally, two or three times a year, and remained a few weeks each time.

[See depositions, trans. rec., 132–3–134.]

This comparison of the depositions of witnesses shows conclusively that, so far as concerns Mrs. Walden's assertion of occupancy as part owner, it is without foundation—and, so far as concerns Mrs. Tefft's asserted recognition of any *legal* right in Mrs. Walden, it is a pure delusion. The explanation given by Mr. and Mrs. Tefft themselves of their views and sentiments with regard to her, as reported by Skinner in his depositions, bears all the marks of truth. It was natural, probable, and entirely consistent with the family history and circumstances. To construe the generous conduct of these aged and bereaved parents to the relict of their dead child into an admission or recognition of *legal* rights in her against them, is not consistent with the gratitude she owed them in life and now owes their memory—it is doing violence to the facts of the case.

But the most conclusive of all the evidence against any admission by Mrs. Tefft of any legal title or claim on the part of the complainant is that of Mrs. Tefft's dealings with the property in various ways and at different times with the knowledge of and without any objection from Mrs. Walden.

Miss Margaret B. Hunter was an intimate friend of the Teffts—so intimate and cherished that Mrs. Tefft, in two wills made by her of which we know the contents, named her as a special legatee. She testifies that as early as 1854, when she was on a visit to the Teffts,

Mrs. Tefft showed to her and Mrs. Walden a will which she then proposed to make. In that will she proposed to divide her property nearly equally between Miss Hunter, Mrs. Walden and Skinner. The only disparity was in favor of Miss Hunter. Mrs. Walden was very angry and remonstrated in an angry manner with Mrs. Tefft—*not* because she was undertaking to dispose by her proposed will of property which belonged to her (Mrs. Walden)—but because she proposed to give to Miss Hunter a larger share than was designed for herself. And Miss Hunter states positively that Mrs. Walden did not on that occasion assert any title or claim whatever to this property or any part of it.

[Depositions of Miss Hunter, printed trans. record, 120.]

This scene occurred in the very house now in controversy—during the life of Mr. Tefft and his son Charles and of Judge Henry, the trustee—only two years after the death of William Tefft, while all the circumstances on which complainant founds her present claim were fresh in the recollection of all those parties, and when she could, if ever, have asserted her claim with absolute success, if her statements are true. Yet she then set up no such claim. And but one conclusion can be drawn from her silence—that she knew she had none, and that she now takes advantage of the death of all the parties to invent one which never had real existence.

But this evidence does something more—it corroborates the evidence, already referred to, of Mrs. Tefft's refusal to have the deed from the city for this property made as her husband wished, and shows that it was actually made in accordance with her own views, and that she so understood it.

Again, on August 11, 1865, Mrs. Tefft entered into a written contract with Robert Erwin for the sale to him of this house and lot, with a forfeiture of $5,000 in case of failure to perform.

[See contract in trans. record, 137–8.]

And Mr. Erwin testifies that Mrs. Walden was an inmate of the house at the time—was fully cognizant of the contract—and "did "not, while the treaty was pending, set up any claim or assert any "title to the property."

[See Erwin's depositions in printed trans. record, 128.]

What did complainant mean by this silence? Had she any claim then? If so, it is very certain she could never have asserted it against Erwin. Is it reasonable to suppose, if she had one, she would have stood by and seen what she calls her property forever alineated by another without a word of remonstrance? Must we not conclude that she knew she had no claim? The copy contract read in evidence was produced by Mrs. Walden herself under the compulsion of an order of the court.

Again, on February 24, 1866, Mrs. Tefft made a will, in which she directed all her property to be sold, and after certain specific legacies, among others to Mrs. Walden and Miss Hunter, gave all the residue to Skinner.

[See copy will in trans. rec., 126.]

The fact and copy of this will are proved by the testimony of W. S. Basinger, the draftsman of it, and one of the executors—and the original will, canceled, is attached to his depositions.

[See depositions, trans. rec., 122.]

On September 28, 1872, Mrs. Tefft made another will, differing from the former in some respects. This was drawn by the same person, who was again named as an executor. On the same day she made a deed to Skinner of the property now in dispute, the substance of which has already been stated. The will gave a legacy to Mrs. Walden on the condition that she should abandon all claims, real or imaginary, that she might have or suppose herself to have, against Mrs. Tefft on the estate of her husband.

[See copy deed, trans. rec., 15, 16.]

[See copy will, trans rec., 7.]

The circumstances under which these instruments were drawn and executed are detailed by the draftsman.

[See Basinger's depositions, trans. rec., 122–5.]

Mrs. Walden knew of this will and deed—was angry about them, but did not even then object that Mrs. Tefft was disposing of anything belonging to her, or assert any claim to or interest in the property—all her indignation appeared to be caused by the fact that it was given to Skinner.

When all these facts are considered, and it is remembered that upon the occasion of her refusal to surrender to Skinner on his demand, when Skinner offered to recognize her claim if it was a just one and she would make it known, she refused, by her counsel, to make known what her claim was, it is impossible not to conclude that she knew she really had none, and was simply contriving on what device or pretence she could invent one.

[See Basinger's depositions, trans. rec., 124.]

The payment of taxes, etc., by Mrs. Walden amounts to nothing. The receipts were just as often to Mrs. Tefft as to herself. It might very well be that Mrs. W. often did these errands for Mrs. Tefft, and that she availed herself of the opportunity to manufacture evidence to be used as occasion might suggest. And it is to be observed that none of these receipts are of an earlier date than October, 1872—after Mrs. Walden knew of the arrangements Mrs. Tefft had made about her property, and when, according to the evidence, she had become very feeble, and most of them after her death.

[See receipts, trans. rec., 75–79.]

The paper attached to Mrs. Walden's second depositions, marked A, purporting to be a certificate from Mrs. Tefft that Mrs. W. had paid her proportion of taxes, etc., merits little consideration.

[See trans. rec., p. 73.]

True, Mrs. Walden swears it was given on the day of its date. But it does not appear from the receipts that she had, at that time, paid any of these expenses at all—the very earliest date of any of them is October 14, 1872. Besides, Mrs. Tefft's own statements showed

that she was conscious of her own weakness—was of the opinion that Mrs. Walden was endeavoring to profit by it—feared she might over-persuade her to do something contrary to her real wishes, and wished to protect herself against such designs as far as she could.

[See Basinger's depositions, trans. rec., 122–3.]

Notwithstanding Mrs. Walden's depositions, and in view of other suggestions of hers as to the state of Mrs. Tefft's mind, etc., which had no foundation in fact, there is too much reason to fear that this certificate was extorted from the old lady, and dated to suit events.

All the evidence was carefully and elaborately reviewed and discussed in the Circuit Court, and seems to fully justify the decree of that court in all particulars.

But suppose there was enough in the circumstances to justify the implication of a trust in favor of William Tefft which passed to his widow—then we say that her claim is barred by the statute of limitations.

According to her own account, she became *sui jaris* upon the death of Wm Tefft, which occurred August 9, 1852. Her bill, by which she for the first time asserted her claim, was filed May 6, 1874, twenty-two years after her right, if she had any, accrued. During all that time she continued to be *sui juris* except during her coverture with Walden, her second husband, which existed only from June 4, 1860, to December 8, 1861, a period of only eighteen months. There was no reason, during all those twenty-two years, except during the eighteen months of her second marriage, why she should not have asserted her rights if she had any. And she had notice, at least in 1854, according to Miss Hunter's testimony, before referred to, that Mrs. Tefft considered the property absolutely her own, and meditated disposing of it by her will. Certainly, she had notice from the date of Mrs. Tefft's contract with Erwin in August, 1865, before referred to, that Mrs. Tefft was asserting sole and exclusive ownership of the property. Now, Mr. Tefft died in 1862, and from that time to the time of her death in 1873, according to the testimony of all the witnesses who speak on that subject, Mrs. Tefft was exercising sole ownership over the property. So Mrs. Tefft, through her trustee, was in possession adverse to Mrs. Walden from 1852, and in her own right from 1862, twenty-two years in the one case, and twelve years in the other. But, according to the law of Georgia, as set forth in the Code, "actual adverse possession of lands, by "itself, for twenty years, shall give good title by prescription," and "adverse possession of lands, under written evidence of title, for "seven years, shall give a like title by prescription."

[Code of Georg a of 1873, §2682, 2683.]

It is of no importance to consider whether the Code worked any change in the law on this subject. It certainly did not reduce the time. And it is clear that Mrs. Tefft was in possession, "using and "treating the property as her own in all respects," as several witnesses have expressed it, under the deed from the City of Savannah

to Chas. S. Henry, trustee for her, from the date of that deed in July, 1849, and certainly from the death of her husband in 1862. And whether we count from William Tefft's death in 1852, or from the death af I. K. Tefft in 1862, Mrs. Tefft continued in possession during all that time, and Mrs. Walden during all that time asserted no right. Thus, whether Mrs. Tefft was in possession with or without written evidence of title, Mrs. Walden's claim is barred. There is no doubt that a claim to an implied trust may be barred.

[Hill on Trustees, m. p., 265.]

[Thomas vs. Brinsfield, 7 Ga. Repts. 154–8.]

And although, since the adoption of the Code, a distinction is to be observed between the limitation of the right to sue and the acquisition of title by prescription, this distinction makes in our favor; for Courts of Equity are bound to recognize and respect statutory as well as other legal titles.

Even if the judgment of the Supreme Court be against us, it is not probable that that tribunal will trouble itself to consider the quantum of Mrs. Walden's interest. But for a more thorough understanding of the case, it will be well to look into that somewhat.

It must be borne in mind, in the first place, that she can have no greater interest than she claims in her bill, whatever the testimony may be—and, in the second place, that she claims in the alternative, viz: Either as the heir of her husband as a vested remainder-man under the Fort deed, or upon an implied trust in favor of her husband.

In the former case, if the Court can possibly sustain that view of the Fort deed, the extreme limit of her claim is ($\frac{4}{9}$) four undivided ninths of the property as it was at Mrs. Tefft's death. For, if the three sons had a vested remainder, when Henry died, his interest went equally to his father and his two brothers—so that William then had $\frac{4}{9}$, Charles $\frac{4}{9}$, and their father $\frac{1}{9}$. When Charles died, his interest went to his father, who thus became entitled to $\frac{5}{9}$; and when Mr. Tefft died, this interest passed to his widow, who, by the merger *pro tanto* of her life-estate, then and thus became the sole owner of $\frac{8}{9}$ in fee, William's interest remaining $\frac{1}{9}$.

If Mrs. Walden be held entitled under an implied trust, we must look more closely into the proof.

She swears in her bill to figures which may be abbreviated as follows:

Cost of lot	$ 241 00
Mr. Tefft's contribution to house	5,634 69
Proceeds of old house	1,800 00
William's share of insurance	2,500 00
	$10,175 69

And she claims to the extent of half of Mr. Tefft's contribution, and half of the $1,800.

But her own evidence, as well as ours, proves that Charles' share of the insurance also went into the new house—$2,500 more—making the whole cost $12,675.69. But it is apparent that the insurance money yielded to William and Charles each only $2,123.63. And if the claim as stated in the bill be allowed, William's interest would be one-third of $241, say $80; ½ half of $5,634.69, say $2,317.34; ½ $900; ½ $2,123.64, or $5,420.98, out of a value of $12,675.69—less than half, say ⅔.

But she does not make out that case by her evidence. For she shows in her depositions, by Mr. Tefft's mem. of the total cost, to which also she swears, that, including the land, it was only $8,909.41.

[See trans. record, 79–80.]

Yet she also swears to the exact sums contributed to the house, viz: Mr. Tefft, $850; proceeds of old house, $1,800; insurance money, $4,247.26; or only $6,897.27 in all.

[See her depositions, trans. rec., 40.]

True, she also swears to $750 of her own not mentioned in the bill. But if that be added, and the cost of the lot besides, it will only make $7,888.27. How are these discrepancies to be accounted for? Do they not illustrate the recklessness which characterize all her statements, and demonstrate the unfounded character of her claim?

But let us take Mr. Tefft's mem. as the true statement of total cost. Then she can only claim what went in on William's account; and, according to her own depositions, this was only $900 and $2,123.64=$3,023.64. And her entire claim, if allowed on the theory of an implied trust in his favor, is only to an interest represented by the fraction

$3,023.64,
————or about one-third.
$8,909.41,

A. R. LAWTON,
For D. S. Skinner, Appellee.